9-22-89
Vol. 54 No. 183
Pages 38961-39154

federal register

Friday
September 22, 1989

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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Federal Register
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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 401

[Doc. No. 7433S]

General Crop Insurance Regulations; Wheat, Barley, Oat, and Rye Endorsements

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice of extension of sales closing date (acceptance of late-filed applications).

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith gives notice of its determination with respect to the acceptance of late-filed applications for wheat, barley, oats, and rye crop insurance in all counties, effective for the 1990 crop year only. This action is necessary in order to accommodate those producers who are required to carry crop insurance protection in order to obtain certain benefits under the provisions of the Disaster Assistance Act of 1989. The intended effect of this notice is to advise all interested parties with respect to the acceptance of late-filed applications, and to comply with the provisions of the General Crop Insurance Regulations (7 CFR part 401), with respect to the Manager's authority to extend the date for accepting applications for crop insurance.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC, 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: The provisions of section 107 of the Disaster Assistance Act of 1989 (the ACT), requires that, subject to certain limitations in the ACT, in order to be eligible to receive certain benefits, a producer must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1505 *et seq.*), and to furnish evidence of such insurance coverage to the county office of the Agricultural Stabilization and Conservation Service (ASCS).

Under its regulations for insuring crops, FCIC requires that applications for crop insurance protection must be obtained before the end of the sales period, known as the sales closing date. The Wheat Endorsement (7 CFR 401.101), the Barley Endorsement (7 CFR 401.103), the Oat Endorsement (7 CFR 401.105), and the Rye Endorsement (7 CFR 401.106) are administered with two sales closing dates established on a geographic basis; September 30, and October 31, for fall-planted crops.

For those producers, required to obtain multi-peril crop insurance protection under the ACT, and whose application is filed after the September 30, 1989, sales closing date, FCIC is providing for the acceptance of late-filed applications on fall-planted wheat, barley, oats, and rye, as follows:

Late-filed applications for crop insurance coverage on the above crops will be accepted up to 15 days after the date ASCS advises the producer that crop insurance must be purchased to comply with the provisions of the ACT. In no case will late-filed applications be accepted past close of business on November 30, 1989.

Under the provisions of the General Crop Insurance Regulations (7 CFR 401.8), the sales closing date for accepting applications may be extended by placing the extended date on file in the service office and by publishing a notice in the Federal Register upon determination that no adverse selectivity will result from such extension.

FCIC has determined that this notice to accept late-filed applications for wheat, barley, oats, and rye crop insurance, made necessary by the provisions of the ACT, is consistent with the authority of the Manager, FCIC, to extend sales closing dates contained in 7 CFR 401.8.

Accordingly, pursuant to the authority contained in 7 CFR 401.8, the Federal Crop Insurance Corporation herewith gives notice that late-filed applications for fall-planted wheat, barley, oats, and rye crop insurance in all counties, will be accepted up to 15 days past the date ASCS advises the producer that crop insurance must be purchased to comply with the provisions of the ACT. In no case will late-filed applications be accepted past close of business on November 30, 1989, effective for the 1990 crop year only.

Authority: 7 U.S.C. 1506, 1516.

Done in Washington, DC, on September 13, 1989.

John Marshall,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-22391 Filed 9-21-89; 8:45 am]
BILLING CODE 3410-08-M

7 CFR Part 409

[Amdt. No. 2; Doc. No. 7284S]

Arizona-California Citrus Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule with request for comment.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Arizona-California Citrus Crop Insurance Regulations (7 CFR part 409), effective for the 1991 and succeeding crop years, to change the date by which insureds are required to submit reports of production for insurance purposes. The intended effect of this rule is to change the currently incorrect date to reflect the date when such information becomes available to citrus insureds.

DATES: This rule is effective September 22, 1989. Comments should be received by November 21, 1989.

ADDRESS: Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need,

currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date for these regulations remains as April 1, 1990.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the Federal paperwork burden for individuals, small businesses, and other persons and will not have a significant impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

In reviewing the Arizona-California Citrus crop insurance policy, it was determined that the date by which the citrus insureds in Arizona and California are required to submit reports on production is incorrect. The current date of December 10 is before information is available on the quantity of citrus picked and shipped to pack houses. Such information is not generally available from pack houses before December 31.

Since the reporting date of December 10 is unrealistic in terms of when the required information becomes available to insureds, and since this date mistakenly was set out in Arizona-California Citrus crop insurance policies, John Marshall, Manager, FCIC, has determined that in order to provide acreage reporting dates that are consistent with industry practices, it is necessary to change the acreage reporting date for Arizona-California citrus insureds from December 10 to January 10. Further, since the date currently set out in the citrus policy is incorrect, and an immediate change would provide a date more in keeping with industry practice and relieve a restriction on current policyholders, good cause is shown for making this rule effective upon publication in the **Federal Register** without provision for prior notice and comment.

FCIC is soliciting public comment for 60 days after the publication of the rule, and will schedule a review of this rule as soon as possible after the 60-day period in order to consider any amendment which may be made necessary by the comments received.

Written comments on this interim rule should be sent to Peter F. Cole, Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250.

Written comments received pursuant to this interim rule will be available for public inspection and copying in the Office of the Manager, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 409

Crop insurance; Arizona-California citrus.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Arizona-California Citrus Crop Insurance Regulations (7 CFR part 409), effective for the 1991 and subsequent crop years, in the following instances:

PART 409—[AMENDED]

1. The authority citation for 7 CFR part 409 is revised to read as follows:

Authority: 7 U.S.C. 1506, 1516.

2. The Arizona-California Citrus Crop Insurance Policy is amended in § 409.7(d), by revising paragraph 3. to read as follows:

§ 409.7 The application and policy.

* * * * *

(d) * * *

3. Report of Acreage, Share, Number of Trees, and Practice

You must report on our form:

a. All the acreage of citrus in the county in which you have a share;

b. The practice;

c. Your share on the date insurance attaches; and

d. The number of bearing trees.

You must designate separately any acreage that is not insurable. You must report if you do not have a share in any citrus grown in the county. This report must be submitted annually on or before January 10. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report by January 10, we may elect to determine by unit the insured acreage, share, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

* * * * *

Done in Washington, DC, on August 31, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-22392 Filed 9-21-89; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 684]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 684 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 290,000 cartons during the period September 24 through September 30, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 684 (7 CFR part 910) is effective for the period September 24 through September 30, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523 South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural

Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601–674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1989–90. The Committee met publicly on September 19, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and, by a 7 to 5 vote, recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that overall demand for lemons is excellent.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necesssary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Arizona, California, Lemons, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 910.984 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.984 Lemon Regulation 684.

The quantity of lemons grown in California and Arizona which may be handled during the period September 24, 1989, through September 30, 1989, is established at 290,000 cartons.

Dated: September 20, 1989.

Eric M. Forman,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 89-22568 Filed 9-21-89; 8:45 am]

BILLING CODE 3410-02-M

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7 CFR Part 920

[Docket No. FV-89-092]

Kiwifruit Grown in California; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule authorizes expenditures and establishes an assessment rate under Marketing Order 920 for the 1989–90 fiscal period. Authorization of this budget will enable the Kiwifruit Administrative Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1989, to July 31, 1990.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456, telephone 202–447–2431.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 920 (7 CFR part 920) regulating the handling of kiwifruit grown in California. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of California kiwifruit under Marketing Order No. 920, and approximately 1,225 kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than $500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than $3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989–90 fiscal year was prepared by the Kiwifruit Administrative Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of California kiwifruit. They are familiar with the committee's needs and with the costs of goods, services, and personnel in their local area, and are thus in a position to formulate an

appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The committee met on July 19, 1989, and unanimously recommended a 1989–90 budget of $136,293. This compares with $129,025 last year. Major increases this year include $8,528 for salaries and benefits, $1,100 for staff vehicle expense, and $2,100 for scales to check weight. Partially offsetting these increases are decreases of $1,000 for controlled buys to check for compliance and $4,300 for maturity test equipment.

The committee also recommended an assessment rate of $0.0075 per 7½ pound tray or equivalent, down from $0.0125 last year. This rate, when applied to anticipated shipments of 9 million trays, will yield $67,500 in assessment income. This, when combined with $68,793 from interest income and the reserve, will provide adequate funds for budgeted expenses. Operating reserve funds, currently at $192,046, will be reduced to approximately one fiscal period's expenses by the end of the 1989–90 fiscal year.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the **Federal Register** on August 21, 1989 (54 FR 34521). That document contained a proposal to add § 920.205 to authorize expenses and establish an assessment rate for the Kiwifruit Administrative Committee. That rule provided that interested persons could file comments through August 31, 1989. No comments were received.

It is hereby found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover them will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553). This action should be expedited because the committee needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. The 1989–90 fiscal period for the program began on August 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable kiwifruit handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting.

List of Subjects in 7 CFR Part 920

California, kiwifruit, Marketing agreements and orders.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. A new § 920.205 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 920.205 Expenses and assessment rate.

Expenses of $136,293 by the Kiwifruit Administrative Committee are authorized, and an assessment rate of $0.0075 per 7½ pound tray or equivalent of kiwifruit is established for the fiscal period ending July 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: September 18, 1989.

William J. Doyle,

Acting Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89–22375 Filed 9–21–89; 8:45am]

BILLING CODE 3410–02–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 311

RIN 3064–AA66

Rules Governing Public Observation of Meetings of the Corporation's Board of Directors

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation ("the FDIC") is amending part 311 of its regulations regarding the disclosure of information in connection with meetings of its Board of Directors to conform to changes required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Public Law No. 101–73, 103 Stat. 183 ("FIRREA") and the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law No. 96–221, 94 Stat. 132.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Patti C. Fox, Senior Program Attorney, Office of the Executive Secretary, (202) 898–3719, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

No collections of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*) are contained in this notice. Consequently, no information has been submitted to the Office of Management and Budget for review.

Reason for Adoption Without Prior Notice and Comment

Immediate adoption of this final rule is necessary to conform the existing rule to the provisions of FIRREA, which provides the FDIC with certain authority over savings associations and expands the membership of the FDIC's Board of Directors from three to five. Because the changes in part 311 of the FDIC's regulations occasioned by the enactment of FIRREA are technical or involve changes of nomenclature, the notice and public participation provisions of the Administrative Procedure Act (5 U.S.C. 553) are not applicable. The FDIC finds, for the same reason, that it is in the public interest to dispense with the 30-day deferred effective date requirement.

Background

In the grant of new regulatory authority to the FDIC over savings associations formerly under the supervisory jurisdiction of the Federal Home Loan Bank Board and the Federal Savings and Loan Insurance Corporation, FIRREA has amended the Federal Deposit Insurance Act to define banks and savings associations collectively as "depository institutions." *See* sec. 204(c)(1), Public Law No. 101–73, 103 Stat. 183 (1989). Thus, "depository institution" has been substituted in part 311 wherever the term "bank" appears. In addition, the examples of actions which may be taken

in closed meetings by the FDIC pursuant to § 311.6(a) have been amended to reflect the FDIC's expanded authority to be appointed as conservator for and to act upon applications for insurance, mergers, and branching authority from depository institutions.

FIRREA increases the number of members on the FDIC's Board of Directors from three to five; therefore, the definition of "meeting" in § 311.2(b) which references the number of members whose presence is necessary to constitute a quorum must be changed from "two" to "three."

Finally, the existing reference to changes in rates of interest pursuant to section 18(g) of the Federal Deposit Insurance Act is being deleted because the Corporation's authority to prescribe limitations on rates of interest paid by banks on deposits was deleted by Public Law 96-221, section 207(b) (2), (3), effective March 31, 1986.

Regulatory Flexibility Analysis

Because no notice of proposed rulemaking is required under section 553 of the Administrative Procedure Act or any other law, the Regulatory Flexibility Act (5 U.S.C. 601-602) does not apply.

List of Subjects in 12 CFR Part 311

Sunshine Act.

For the reasons set out above, 12 CFR part 311 is amended as set forth below.

PART 311—RULES GOVERNING PUBLIC OBSERVATION OF MEETINGS OF THE CORPORATION'S BOARD OF DIRECTORS

1. The authority citation for part 311 is revised to read as follows:

Authority: 5 U.S.C. 552b and 12 U.S.C. 1819.

§ 311.2 [Amended]

2. In 12 CFR 311.2(b), remove the word "two" and add, in its place, the word "three."

3. Section 311.6 is amended by revising the second sentence in paragraph (a) to read as follows:

§ 311.6 Expedited procedure for announcing and closing certain meetings.

(a) * * * Absent a compelling public interest to the contrary, meetings or portions of meetings that can be expected to be closed using these procedures include, but are not limited to: Administrative enforcement proceedings under section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818); appointment of the Corporation as conservator of a depository institution, or as receiver, liquidator or liquidating agent of a closed depository institution or a depository institution in danger of closing; and certain management and liquidation activities pursuant to such appointments; possible financial assistance by the Corporation under section 13 of the Federal Deposit Insurance Act (12 U.S.C. 1823); certain depository institution applications including applications to establish or move branches, applications to merge, and applications for insurance; and investigatory activity under section 10(c) of the Federal Deposit Insurance Act (12 U.S.C. 1820(c)). * * *

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of September, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-22431 Filed 9-21-89; 8:45 am]

BILLING CODE 6714-01-M

OVERSIGHT BOARD

12 CFR Chapter XV

Establishment of Chapter XV and Statement of Organization and Functions of the Oversight Board

AGENCY: Oversight Board.

ACTION: Final rule.

SUMMARY: By this document the Oversight Board establishes Chapter XV in title 12 of the Code of Federal Regulations for publication of its rules and regulations. The Oversight Board is an instrumentality of the United States, in the Executive Branch of the Government, established by the Federal Home Loan Bank Act as amended by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

EFFECTIVE DATE: September 18, 1989.

FOR FURTHER INFORMATION CONTACT: Bradford B. Baker, Acting Executive Secretary, at (202) 387-7667 (not a toll free call).

SUPPLEMENTARY INFORMATION:

A. General

The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA"), Public Law No. 101-73, 103 Stat. 183, signed into law on August 9, 1989, established the Oversight Board ("Board") as an instrumentality of the United States. The Board is a body corporate and an agency of the United States for the purposes of subchapter II of chapter 5 and chapter 7 of title 5, United States Code, and for the purposes of title 18, United States Code.

The Board is responsible for the general oversight of the Resolution Trust Corporation ("RTC") and the Resolution Funding Corporation ("REFCORP"), both of which were established by the FIRREA. With respect to the RTC, the Board's duties and authorities include the development and establishment of overall strategies, policies, and goals; the approval of financial requests; the review of all rules, regulations, principles and guidelines that may be adopted by the RTC, other than internal administrative policies and procedures, case-specific matters, or day-to-day operations of the RTC; the periodic review of the RTC's overall performance; and the establishment of national and regional advisory boards. The strategic plan for conducting the RTC's activities shall be submitted to the Congress not later than December 31, 1989. The Board and the RTC are also required to promulgate rules and regulations governing conflicts of interests and ethical responsibilities for the officers, employees and contractors of the Board and the RTC. *See* FIRREA, Subtitle A of Title V, amending the Federal Home Loan Bank Act by inserting after section 21 a new section 21A.

With respect to the REFCORP, the Board will exercise general oversight authority; prescribe the time and manner in which the Federal Home Loan Banks shall invest in REFCORP; prescribe such regulations, orders, and directions as it may deem appropriate to carry out the purposes of REFCORP; select two of the members of the REFCORP Directorate from among the Federal Home Loan Bank presidents; and select the chairperson of the REFCORP Directorate from among its three members. The Directorate is subject to such regulations, orders and directions as the Oversight Board may prescribe. See FIRREA, Subtitle B of Title V, amending the Federal Home Loan Bank Act by inserting after section 21A a new section 21B.

The Board is required to conduct at least four open meetings each year to establish and review the general policy of the RTC. The Board and the RTC are required to submit to the President and the Congress an annual report of their operations, activities, budgets, receipts and expenditures for the preceding 12 months and a similar report for the operations of REFCORP. The Board and the RTC are also required to submit to Congress semiannual reports on their activities and efforts and those of the Federal Deposit Insurance Corporation.

In addition, the Board must annually submit a full report of the operations, activities, budget, receipts and expenditures of the REFCORP for the preceding 12 months.

The Board consists of the following five members: The Secretary of the Treasury, who is the Chairperson of the Board; the Chairman of the Board of Governors of the Federal Reserve System; the Secretary of Housing and Urban Development; and two independent members to be appointed by the President with the advice and consent of the Senate for a term of three years each.

The day-to-day operations of the Board are to be conducted through its officers. The officers of the Board include a President and Chief Executive Officer, and, as the Board may determine, one or more Executive or Senior Vice Presidents, one or more Vice Presidents, a Secretary, and such other officers as the Board determines to be necessary. The Board's offices are located at 1825 Connecticut Avenue, NW., Washington, DC 20232. Phone (202) 387-7667.

The regulations for the Board will appear in chapter XV of title 12, Code of Federal Regulations. The Board intends to publish in the near future its initial body of regulations in the Federal Register.

B. Procedural Requirements

Because this rule relates to agency organization and management, it is not subject to the notice and public procedure or delayed effective date provisions of the Administrative Procedure Act pursuant 5 U.S.C. 553(a)(2), or to Executive Order 12291. Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

For the reasons set out in the preamble and under the authority of Public Law 101-73, 103 Stat. 183, chapter XV is hereby established in title 12, Code of Federal Regulations, as set forth below:

CHAPTER XV—OVERSIGHT BOARD

Dated: September 18, 1989.

William Taylor,

Vice President for Finance and Administration.

[FR Doc. 89-22389 Filed 9-21-89; 8:45 am]

BILLING CODE 4810-25-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084-AA26

Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances; Ranges of Comparability for Room Air Conditioners and a Correction Pertaining to Ranges of Comparability for Dishwashers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by revising the ranges of comparability used on required labels for room air conditioners. Properly labeled room air conditioners manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

The Commission is also amending the Appliance Labeling Rule to indicate that energy usage figures for dishwashers are based on 6.2 loads of dishes per week, rather than eight loads per week, as incorrectly published earlier.

EFFECTIVE DATES: December 21, 1989, except amendment to paragraph 2 of appendix C is effective September 22, 1989.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, pursuant to section 324 of the Energy Policy and Conservation Act of 1975 (EPCA),[1] the Commission issued a final rule [2] covering a number of appliance categories, including room air conditioners. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all room air conditioners presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a room air conditioner is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of Department of Energy (DOE) test procedures specified in the rule.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15 percent.

The new figures for the energy efficiency ratings for room air conditioners have been submitted to and analyzed by the Commission. New ranges based upon them are herewith published.

When the Commission published new ranges of comparability for dishwashers on August 9, 1989,[4] paragraph 2 of appendix C incorrectly showed that energy usage for dishwashers should be based on eight loads per week, instead of 6.2 loads per week. The Commission is amending paragraph 2 to correct that inadvertent error.

In consideration of the foregoing, the Commission amends appendix E of its Appliance Labeling Rule by publishing the following ranges of comparability for use in the labeling and advertising of room air conditioners beginning December 21, 1989, and amends paragraph 2 of appendix C of its Appliance Labeling Rule by publishing the following amended paragraph 2 to indicate that the energy usage figures for dishwashers are based on 6.2 loads of dishes per week. This latter amendment, which corrects a typographical (rather than substantive) error, is effective September 22, 1989.

[1] Pub. L. 94-163, 89 Stat. 871 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305.

[3] Reports for room air conditioners are due by May 1.

[4] 54 FR 32631.

List of Subjects in 16 CFR Part 395

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: Sec. 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act (Pub. L. 100–12) (1987), and the National Appliance Energy Conservation Amendments of 1988 (Pub. L. 100–357) (1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

2. In appendix E, paragraph 1 is revised to read as follows:

* * * * *

APPENDIX E—ROOM AIR CONDITIONERS.

1. RANGE INFORMATION:

Manufacturers rated cooling capacity in BTU's/hr.	Ranges of energy efficiency ratings	
	Low	High
Less than 4,000	(*)	(*)
4,000 to 4,299	5.8	8.0
4,300 to 4,799	6.5	9.0
4,800 to 5,299	5.5	9.0
5,300 to 5,799	7.6	9.5
5,800 to 6,299	6.6	9.5
6,300 to 6,799	8.7	9.5
6,800 to 7,299	8.5	11.0
7,300 to 7,799	5.2	9.5
7,800 to 8,299	7.1	10.5
8,300 to 8,799	8.5	9.2
8,800 to 9,299	7.2	12.0
9,300 to 9,799	7.5	9.1
9,800 to 10,299	7.1	11.6
10,300 to 10,799	8.5	12.0
10,800 to 11,299	8.5	9.2
11,300 to 11,799	7.8	9.0
11,800 to 12,299	7.5	9.5
12,300 to 12,799	8.6	9.0
12,800 to 13,299	9.0	9.7
13,300 to 13,799	8.2	10.2
13,800 to 14,299	7.8	10.2
14,300 to 14,799	8.5	9.0
14,800 to 15,299	8.5	9.2
15,300 to 15,799	8.5	8.5
15,800 to 16,499	9.0	9.0
16,500 to 17,499	8.5	8.7
17,500 to 18,499	6.5	9.5
18,500 to 19,499	7.0	9.5
19,500 to 20,499	7.8	8.2
20,500 to 21,499	6.7	9.0
21,500 to 22,499	6.5	8.2
22,500 to 24,499	7.9	9.2
24,500 to 26,499	8.2	9.0
26,500 to 28,499	7.6	9.0
28,500 to 32,499	6.5	9.1
32,500 to 36,000	6.6	8.2

* No data submitted.

* * * * *

3. Paragraph 2 of appendix C to part 305 is amended to read as follows:

* * * * *

2. Yearly Cost Information:

Estimates on the scales are based on a national average electric rate of 7.70¢ per kilowatt hour, a national average natural gas rate of 55.2¢ per therm, and 6.2 loads of dishes per week.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 22442 Filed 9–21–89; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 88F–0193]

Indirect Food Additives; Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(methoxymethyl)tetrakis-[(octadecyloxy)methyl] melamine resins as a water repellant in the manufacture of paper and paperboard for food-contact use. This action is in response to a petition filed by Bercen, Inc.

DATES: Effective September 22, 1989. Written objections and requests for a hearing by October 23, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF–335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 1988 (53 FR 23454), FDA announced that a food additive petition (FAP 6B3952) had been filed by Cranston Print Works Co., 1381 Cranston St., Cranston, RI 02920, on behalf of Bercen, Inc., proposing that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of bis(methoxymethyl)tetrakis-[(octadecyloxy)methyl] melamine resins as a water repellant in the manufacture of paper and paperboard for food-contact use.

FDA has evaluated the data in the petition and other relevant material. The agency concludes that these data and material establish the safety of the level of use of the additive in the manufacture of paper and paperboard for food-contact use, and that the regulations should be amended in the table of § 176.170(a)(5) as set forth below. The agency is also adding the CAS registry number for the subject additive to its listing in the table of § 176.170(a)(5).

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 23, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a

waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 176.170 is amended in the table in paragraph (a)(5) by adding to the entry for "Bis(methoxymethyl) tetrakis[(octadecyloxy)methyl]melamine resins * * *" under the "List of Substances" column, and by adding a new item "3." under the "Limitations" column to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of substances	Limitations
* * *	* *
Bis(methoxymethyl)tetrakis [(octadecyloxy) methyl]melamine resins having a 5.8–6.5 percent nitrogen content (CAS Reg. No. 68412-27-1)..	For use only under the following conditions: * * * 3. As a water repellant employed after the sheet-forming operation in the manufacture of paper and paperboard in such amount that the finished paper and paperboard will contain the additive at a level not to exceed 1.6 percent by weight of the finished dry paper and paperboard fibers. The finished paper and paperboard will be used only in contact with food of Types I, II, IV–B, VI, VII–B, and VIII described in Table 1 of paragraph (c) of this section.
* * *	* *

* * * * *

Dated: September 11, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89–22345 Filed 9–21–89; 8:45 am]

BILLING CODE 4160–01–M

21 CFR Part 177

[Docket No. 88F–0196]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of trimethyl trimellitate as an optional monomer in the manufacture of certain polyester elastomers intended for repeated use in contact with food. This action is in response to a petition filed by E. I. du Pont de Nemours & Co.

DATES: Effective September 22, 1989. Written objections and requests for a hearing by October 23, 1989.

ADDRESSES: Written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 22, 1988 (53 FR 23455), FDA announced that a food additive petition (FAP 8B4089) had been filed by E. I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to provide for the safe use of trimethyl trimellitate as an optional monomer in the manufacture of a certain polyester elastomer derived from the reaction of dimethylterephthalate, 1,4-butanediol, and α-hydro-Ω-hydroxypoly(oxytetramethylene) intended for repeated use in contact with food.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that § 177.2600(c)(4)(i) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before October 23, 1989 file with the Dockets Management Branch written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under

authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 177.2600 is amended in paragraph (c)(4)(i) by revising the entry for "Polyester elastomers" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Polyester elastomers derived from the reaction of dimethyl terephthalate, 1,4-butanediol, and α-hydro-Ω-hydroxypoly (oxytetramethylene). Additionally, trimethyl trimellitate may be used as a reactant. The polyester elastomers may be used only in contact with foods containing not more than 8 percent alcohol and limited to use in contact with food at temperatures not exceeding 150 °F.

* * * * *

Dated: September 11, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-22346 Filed 9-21-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8266]

RIN: 1545-AN67

Treatment of Salvage and Reinsurance Under Section 832(b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the treatment of salvage and reinsurance under section 832(b)(5) of the Internal Revenue Code of 1986. The regulations affect property and casualty insurance companies and provide them with guidance needed to comply with the relevant law. The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the Federal Register.

EFFECTIVE DATES: Section 1.832-7T is effective for taxable years beginning before January 1, 1989. The amendments to § 1.832-4T are effective for taxable years beginning after December 31, 1988.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Branch 4 (CC:FI&P:4), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566-3294 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document amends the Income Tax Regulations (26 CFR part 1) to provide temporary rules relating to the treatment of salvage and reinsurance under section 832(b)(5) of the Internal Revenue Code of 1986.

Explanation of Provisions

The losses incurred deduction described in section 832(b)(5) includes both losses paid and unpaid losses. Section 832(b)(5) requires that the losses paid component of the deduction be reduced by any increase in salvage and reinsurance recoverable.

The regulations under section 832 were amended by the Internal Revenue Service on January 5, 1988, to require that salvage recoverable be taken into account in the computation of both losses paid and unpaid losses. Although section 832(b)(5) requires this treatment with respect to losses paid, the prior regulations allowed taxpayers to exclude any salvage not permitted to be taken into account for state insurance regulatory purposes. The regulations were amended to delete this exclusion and thereby produce a clearer reflection of income.

The regulations also were amended in 1988 to clarify that a reasonable estimate of the amount of unpaid losses that a taxpayer will be required to pay must take into account expected recoveries on account of salvage and reinsurance attributable to such losses. In addition, the 1988 amendments provided guidance on accounting adjustments to be made by taxpayers not already in compliance with the amended regulations, and clarified that the term "salvage" includes subrogation claims.

These temporary regulations postpone the effective date of the 1988 amendments until taxable years beginning after December 31, 1988, and reinstate the prior regulations for taxable years beginning before January 1, 1989. For taxable years beginning before January 1, 1989, a taxpayer complying with the provisions of section 1.832-4T is deemed to have used a proper method of accounting for salvage.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.801-1 through 1.846

Income taxes; Insurance companies.

Amendments to the Regulations

For the reasons set out in the preamble, title 26, chapter 1, subchapter A, part 1 of the Code of Federal Regulations is amended as set forth below:

Income Tax Regulations (26 CFR Part 1)

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 1.832-4T is amended by

revising paragraphs (d)(1) and (e) to read as follows:

§ 1.832-4T Gross income (temporary).

* * * * *

(d)(1) The treatment of salvage and reinsurance is a method of accounting. Every insurance company to which this section applies that did not treat salvage and reinsurance as provided in this section for the last taxable year beginning before January 1, 1989, must change its method of accounting with respect to salvage and reinsurance in the first taxable year beginning after December 31, 1988. The change in method of accounting will result in a section 481(a) adjustment. The fresh start provision of section 1023(e) of the Tax Reform Act of 1986 does not apply to the change in method of accounting required by this paragraph (d)(1).

* * * * *

(e) Paragraphs (b), (c), and (d) of this section are effective for taxable years beginning after December 31, 1988. In computing unpaid losses for taxable years beginning before January 1, 1989, an insurance company to which this section applies is not required to take into account estimated recoveries on account of salvage attributable to unpaid losses. In addition, the provisions of § 1.832-7T apply to the treatment of salvage recoverable in the computation of paid losses for such taxable years. Taxpayers complying with the provisions of this section for taxable years beginning before January 1, 1989, are deemed to have used a proper method of accounting for salvage for such taxable years.

Par. 3. Part 1 is amended by adding § 1.832-7T to read as follows:

§ 1.832-7T Treatment of salvage and reinsurance in computing "losses incurred" deduction, taxable years beginning before January 1, 1989 (temporary).

(a) In computing "losses incurred" the determination of unpaid losses at the close of each year must represent actual unpaid losses as nearly as it is possible to ascertain them.

(b) Every insurance company to which this section applies must be prepared to establish to the satisfaction of the district director that the part of the deduction for "losses incurred" which represents unpaid losses at the close of the taxable year comprises only actual unpaid losses stated in amounts which, based upon the facts in each case and the company's experience with similar cases, can be said to represent a fair and reasonable estimate of the amount the company will be required to pay. Amounts included in, or added to, the estimates of such losses which in the opinion of the district director are in excess of the actual liability determined as provided in the preceding sentence will be disallowed as a deduction. The district director may require any such insurance company to submit such detailed information with respect to its actual experience as is deemed necessary to establish the reasonableness of the deduction for "losses incurred".

(c) That part of the deduction for "losses incurred" which represents an adjustment to losses paid for salvage and reinsurance recoverable shall, except as hereinafter provided, include all salvage in course of liquidation, and all reinsurance in process of collection not otherwise taken into account as a reduction of losses paid, outstanding at the end of the taxable year. Salvage in course of liquidation includes all property (other than cash), real or personal, tangible or intangible, except that which may not be included by reason of express statutory provisions (or rules and regulations of an insurance department) of any State or Territory or the District of Columbia in which the company transacts business. Such salvage in course of liquidation shall be taken into account to the extent of the value thereof at the end of the taxable year as determined from a fair and reasonable estimate based upon either the facts in each case or the company's experience with similar cases. Cash received during the taxable year with respect to items of salvage or reinsurance shall be taken into account in computing losses paid during such taxable year.

(d) This section is effective for taxable years beginning before January 1, 1989.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason it is impracticable to issue this Treasury decision with notice and public procedure under section (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: September 7, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89-22105 Filed 9-21-89; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8268]

RIN 1545-AL81

Requirements For Investments To Qualify Under Section 936(d)(4) As Investments In Qualified Caribbean Basin Countries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the requirements that must be met for an investment to qualify under section 936(d)(4) as an investment in qualified Caribbean Basin Countries. Subject to such conditions as are prescribed by regulation, funds of possessions corporations that are invested by financial institutions in active business assets or development projects in a qualified Caribbean Basin country are to be treated as used in Puerto Rico for purposes of section 936(d)(2). The regulations prescribe the conditions for such an investment to qualify as for use in Puerto Rico under section 936(d)(4). The text of the temporary regulations set forth in this document also serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: This temporary regulation is to be effective for investments made by a possessions corporation in a financial institution that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico after September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Christine Halphen (202-377-9493, not a toll-free call) or W. Edward Williams (202-287-4851, not a toll-free call) of the Office of Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224 (Attention: CC:CORP:T:R (INTL-955-86)), (202-287-4851, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued

without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545–1138. The estimated average annual burden per respondent/recordkeeper is 30 hours depending on individual circumstances.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary Income Tax Regulations (26 CFR part 1) under section 936(d)(4) of the Internal Revenue Code of 1986, which section was enacted by section 1231(c) of the Tax Reform Act of 1986 (100 Stat. 2085).

Need for Temporary Regulations

Guidance as to the requirements that must be met for an investment by a possessions corporation to qualify under section 936(d)(4) is needed as soon as possible in order to assist the making of loans under the Caribbean Basin initiative program. Therefore, good cause is found to dispense with the notice and public procedure requirements of 5 U.S.C. 553(b) and the delayed effective date requirement of 5 U.S.C. 553(d).

Explanation of Provision

Section 1231(c) of the Tax Reform Act of 1986, Public Law 99–514 (Oct. 22, 1986), expands the definition of qualified possessions source investment income ("QPSII") by adding section 936(d)(4) to the Internal Revenue Code, effective for taxable years beginning after December 31, 1986. The purpose of the amendment is primarily to help promote economic development in qualified countries in the Caribbean region by allowing funds of possessions corporations to be invested not only in the U.S. possession where the possessions corporation conducts its business, but also, after 1986, in business and development projects in those Caribbean countries. The provision is essentially targeted to possessions corporations operating in Puerto Rico with the anticipation that it will help make new funds available for qualified Caribbean projects at reasonable rates of interest, reflecting the quasi-tax exemption granted to QPSII (by reason of the U.S. possessions tax credit under section 936 of the Code and substantial tax exemptions in Puerto Rico). The provision originated in the House Ways and Means Committee, and the Committee's Report indicates that the Government of Puerto Rico will make a good faith effort to commit $100 million annually of new funds for private direct investment in qualified Caribbean countries. Furthermore, the Committee's Report, as well as the Report of the Conference Committee, anticipates that the funds for investment are to be made available, without additional cost to the United States, from a variety of sources including possessions corporations (in exchange for future Puerto Rican tax concessions), Government Development Bank funds, and grants by the Government of Puerto Rico. *See* H. Rep. No. 99–426, 99th Cong., 1st Sess. 413, 420 (Dec. 7, 1985); and H. Rep. No. 99–841, Vol. II, 99th Cong., 2d Sess. 631, 632 (Sept. 18, 1986).

Section 936(d) of the Internal Revenue Code defines QPSII generally as gross income that a possessions corporation derives from sources within the U.S. possession in which it conducts an active trade or business and that is attributable to the investment in such possession, for use therein, of the possessions corporation's funds. Thus, the passive investment income of a possessions corporation that conducts an active trade or business in Puerto Rico would qualify as QPSII only if the income is from sources within Puerto Rico and the funds invested by the possessions corporation are for use in Puerto Rico. New section 936(d)(4), enacted by the Tax Reform Act of 1986, expands the definition of QPSII by providing, in substance, that an investment in a financial institution will, subject to such conditions as the Secretary of the Treasury prescribes pursuant to regulations, be treated as used in Puerto Rico to the extent used by such financial institution for investment in accordance with the goals and purposes of the Caribbean Basin Economic Recovery Act (Pub. L. 98–67 (Aug. 5, 1983), 97 Stat. 384, 19 U.S.C. 2701 *et seq.*), in active business assets or development projects in a qualified Caribbean Basin country. Regulations will be issued under section 936(d)(2) regarding the applicable rules for determining the source of income from investments made by a possessions corporation. It is anticipated that such regulations will reflect the previously stated position that income from section 936 funds made available for a qualified CBI investment through loans from a possessions corporation to a Puerto Rican financial institution which would then loan the funds on substantially identical terms to certain CBI obligors will be treated as Puerto Rican source income for purposes of determining whether such income qualifies as QPSII. See letter from the Assistant Secretary for Tax Policy of the Treasury Department to Congressman Charles Rangel, dated August 24, 1988.

Section 1.936–10T(c) of the temporary regulation provides guidance with respect to section 936(d)(4), principally in terms of the requirements for investments to qualify under section 936(d)(4) and certain certification and due diligence requirements.

Paragraph (c)(1) outlines the general requirements for an investment to be a qualified investment for purposes of section 936(d)(4): (1) The investment is a loan made out of the possessions corporation's qualified funds; (2) the loan is made by a qualified financial institution; (3) the loan is made to a qualified recipient for investment in active business assets or a development project in a qualified Caribbean Basin country; (4) the investment is authorized by the Commissioner of Financial Institutions of Puerto Rico under regulations issued by such Commissioner; and (5) the qualified recipient and the qualified financial institution comply with certain certification, agreement, and due diligence requirements.

Paragraph (c)(2) makes clear that an investment that qualifies for purposes of section 936(d)(4) when made must continue to meet the qualification requirements in order to retain its qualified status. However, substantial compliance rules are provided that allow correction of a failure to comply within a reasonable period of time after such failure is, or should have been, discovered. Also, failure to comply with due diligence requirements does not automatically disqualify an investment if the failure is due to reasonable cause and the financial institution or the

qualified recipient can establish that the funds were properly invested.

Paragraph (c)(3) defines "qualified financial institution" as any entity that both qualifies as a banking, financing or similar business under § 1.864–4(c)(5)(i) of the Treasury Regulations and is an "eligible institution", as defined in section 4.2.13 of Regulation No. 3582 promulgated by the Office of the Commissioner of Financial Institutions in Puerto Rico to regulate those institutions that are eligible to pay tax-exempt interest under the Puerto Rico Industrial and Tax Incentive Acts. Generally, an eligible institution is a depositary institution that is regulated by the Office of the Commissioner of Financial Institutions and other banking authorities in Puerto Rico and is authorized by the Commissioner of Financial Institutions to receive certain funds from exempted businesses (including from possessions corporations) pursuant to regulation No. 3582. The term "qualified financial institution" also includes the Government Development Bank for Puerto Rico, the Puerto Rico Economic Development Bank, as well as any other entity which the Internal Revenue Service may determine to be a qualified financial institution. A qualified financial institution does not include a branch that a Puerto Rican bank or other financial institution may maintain outside of Puerto Rico.

Paragraph (c)(4) defines an investment in active business assets generally as a loan to a qualified recipient for the acquisition, construction, rehabilitation, improvement, upgrading or expansion by the qualified recipient of qualified assets for use by the recipient in a qualified business activity and for the financing of expenditures incidental to such acquisition. The qualified recipient must own the qualified assets rather than lease or license them. Qualified assets are: (1) Newly constructed or improved real property; (2) tangible personal property (including capital expenditures for the reconditioning, upgrading, transformation or improvement of any tangible personal property), provided such tangible personal property is either new property or used property that at no time during the preceding 5-year period was used in a business activity in the qualified Caribbean Basin country in which the property is to be used; (3) intangible property rights (not including U.S. rights or rights acquired from a related person), provided the rights were at no time during the preceding 5-year period used in a business activity in the qualified Caribbean Basin country in which the property is to be used; and (4) exploration and development expenditures relating to oil, gas or mineral deposits. The regulations leave open the possibility for the Service to qualify other assets either by way of published rulings or private letter rulings. Paragraph (c)(4)(iii) defines incidental expenditures as expenditures associated with placing qualified assets in service, including reasonable costs associated with arranging the financing of the investment and *de minimis* amounts for working capital requirements and the refinancing of existing debt. Paragraph (c)(4)(iv) defines a qualified business activity as a lawful industrial or commercial activity that is conducted as an active trade or business (using standards similar to those described in § 1.367–2T(b) (2) and (3)) in a qualified Caribbean Basin country. A trade or business is generally defined in reference to various business classifications used in the 1987 Standard Industrial Classification Manual.

Paragraph (c)(5) defines an investment in a development project generally as an investment in qualified assets for use in either a facility in a qualified Caribbean Basin country that either supports local economic development and satisfies a public use requirement or supports the performance in a qualified Caribbean Basin country of a non-commercial governmental function (other than military activities).

Paragraph (c)(6) contains temporary period rules that specify the time limits within which loan or bond proceeds disbursed to a qualified recipient must be used to pay for the costs of the investment in qualified business assets or the development project. Generally, loan or bond proceeds must be invested within six months of disbursement or date of issue. A longer temporary period is allowed under paragraph (c)(6)(ii) in the case of a construction project or a long-term contract that is financed out of bond proceeds. In that case, the temporary period is as long as is reasonably required to complete the project or contract, based upon a plan filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico prior to the date of issue.

Rules are also provided in paragraph (c)(6)(iv) concerning the investment of loan or bond proceeds during a temporary period. Generally, the loan or bond proceeds may be held in unrestricted yield investments during the six-month period beginning with the date of disbursement of loan proceeds to the borrower or the date of issue, but the investments must give rise to income sourced in Puerto Rico or in the Caribbean Basin country in which the investment is made. Any bond proceeds allowed to be held beyond the six-month period must be invested in eligible activities in Puerto Rico, as defined under Puerto Rican Regulation No. 3582.

Paragraph (c)(7) contains rules regarding the replacement of temporary financing with permanent financing that qualifies for QPSII treatment and the refunding of existing QPSII-qualified bond issues or loan arrangements.

Paragraph (c)(8) contains miscellaneous operating rules, including rules concerning the use of a financial intermediary other than a qualified financial institution to loan funds to a qualified recipient for an investment in active business assets or in a development project.

Paragraph (c)(9) defines a qualified recipient as a person described in section 7701(a)(1) of the Code that is engaged in a qualified business activity or a government of a qualified Caribbean Basin country, provided such person or government complies with the agreement and representation requirements of paragraph (c)(11).

Paragraph (c)(10) defines an investment in a qualified Caribbean Basin country generally as an investment in an active business asset or a development project located or used in the qualified Caribbean Basin country. A qualified Caribbean Basin country is defined as the U.S. Virgin Islands and any beneficiary country that meets the requirements of section 274(h)(6)(A) (i) and (ii), and includes the territorial waters and continental shelf thereof.

The balance of the temporary regulation deals with the agreements and representations required of qualified recipients and qualified financial institutions, including the certification requirement in section 936(d)(4)(C)(i) and the due diligence requirements imposed upon qualified financial institutions. The due diligence requirements in the temporary regulation are based on requirements in regulations promulgated by the Puerto Rican government.

The temporary regulations contain no special provisions regarding the funding of privatization transactions. Comments are solicited as to the circumstances in which funding of a privatization should qualify as an investment in active business assets as opposed to a mere refinancing of existing investments.

Special Analyses

It has been determined that these rules are not major rules as defined in

Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Drafting Information

The principal authors of these regulations are Christine Halphen and W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations.

List of Subjects in 26 CFR 1.861–1 Through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investment in U.S., Foreign tax credit, FSC, Sources of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. The authority for part 1 continues to read in part:

Authority: 26 U.S.C. 7805. * * *

Par. 2. New §§ 1.936–8T and 1.936–9T are added and reserved immediately following § 1.936–7 to read as follows. New § 1.936–10T is added immediately following those sections to read as set forth below.

§ 1.936–8T. Qualified possession source investment income (Temporary regulations). [Reserved]

§ 1.936–9T. Source of qualified possession source investment income (Temporary regulations). [Reserved]

§ 1.936–10T Qualified investments (Temporary regulations).

(a) *In general.* [Reserved]

(b) *Qualified investments in Puerto Rico.* [Reserved]

(c) *Qualified investment in certain Caribbean Basin countries*—(1) *General rule.* An investment of qualified funds described in § 1.936–10T shall be treated as a qualified investment of funds for use in Puerto Rico if the funds are used for a qualified investment in a qualified Caribbean Basin country. A qualified investment in a qualified Caribbean Basin country is a loan of qualified funds by a qualified financial institution (described in paragraph (c)(3) of this section) to a qualified recipient (described in paragraph (c)(9) of this section) for investment in active business assets (as defined in paragraph (c)(4) of this section) in a qualified Caribbean Basin country (described in paragraph (c)(10)(ii) of this section) or for investment in development projects (as defined in paragraph (c)(5) of this section) in a qualified Caribbean Basin country, provided—

(i) The investment is authorized, prior to disbursement of the funds, by the Commissioner of Financial Institutions of Puerto Rico pursuant to regulations issued by such Commissioner; and

(ii) The agreement, representation, certification, and due diligence requirements under paragraphs (c)(11), (c)(12), and (c)(13) of this section are complied with.

(2) *Termination of qualification*—(i) *In general.* An investment that, at any time after having met the requirements for a qualified investment in a qualified Caribbean Basin country under the terms of this paragraph (c), fails to meet any of the conditions enumerated in this paragraph (c) shall no longer be considered a qualified investment in a qualified Caribbean Basin country from the time of such failure, unless the investment satisfies the requirements for substantial compliance described in paragraph (c)(2)(ii) of this section. Such a failure includes, but is not limited to, the occurrence of any of the following events:

(A) Active business assets ceasing to qualify as such;

(B) Proceeds from the investment being diverted for the financing of assets, projects, or operations that are not active business assets or development projects or are not the assets or the project of the qualified recipient;

(C) The qualified recipient's qualified business activity ceasing to qualify as such; or

(D) The qualified Caribbean Basin country ceasing to be a country described in paragraph (c)(10)(ii) of this section.

(ii) *Substantial compliance*—(A) *In general.* Substantial compliance with the requirements of this paragraph (c) shall be satisfied if the event or events that cause disqualification of the investment are corrected within a reasonable period of time. For purposes of this section, a reasonable period of time shall not exceed 60 days after such event or events come to the attention of the qualified recipient or the qualified financial institution or should have come to their attention by the exercise of reasonable diligence.

(B) *Due diligence requirements.* Substantial compliance with the due diligence requirements of paragraphs (c)(11), (c)(12), and (13) of this section shall be satisfied if the failure to comply is due to reasonable cause and, upon request of the Commissioner of Financial Institutions of Puerto Rico or of the Assistant Commissioner (International) (or his authorized representative), the qualified financial institution, the financial intermediary, or the qualified recipient establishes to the satisfaction of the Commissioner of Financial Institutions of Puerto Rico or of the Assistant Commissioner (International) (or his authorized representative) that it has exercised due diligence in ensuring that the funds were properly disbursed to a qualified recipient and applied by or on behalf of such qualified recipient to uses that qualify the investment as an investment in qualified business assets or a development project under the provisions of this paragraph (c).

(iii) *Assumption.* An investment shall not cease to qualify merely because the qualified recipient's obligation to the qualified financial institution (or to a financial intermediary, if any) is assumed by another person provided such other person assumes the qualified recipient's agreement and representation requirements under paragraph (c)(11)(i) of this section and is either—

(A) A qualified recipient on the date of assumption, in which case such person shall be treated for purposes of this section as the original qualified recipient and shall be subject to all the requirements of this section for continued qualification of the loan as a qualified investment in a qualified Caribbean Basin country; or

(B) An international organization, the principal purpose of which is to foster economic development in developing countries and which is described in section 1 of the International Organizations Immunities Act (22 U.S.C. 288), if the assumption of the obligation is pursuant to a bona fide guarantee agreement.

(3) *Qualified financial institution*—(i) *General rule.* For purposes of section 936(d)(4)(A) and this section, a qualified financial institution includes only—

(A) A banking, financing, or similar business defined in § 1.864–4(c)(5)(i) that

is an eligible institution described in subdivision (ii) of this paragraph (c)(3), but not including branches of such institution outside of Puerto Rico;

(B) The Government Development Bank for Puerto Rico;

(C) The Puerto Rico Economic Development Bank; and

(D) Such other entity as may be determined by the Commissioner by notice or other guidance published in the Internal Revenue Bulletin or by ruling issued to an entity which establishes its eligibility.

A ruling request from an entity pursuant to this paragraph (c)(3) must set forth sufficient information to establish that the entity is in substance, purpose, and operation a financial institution of the type referred to in paragraph (c)(3)(i) (A), (B), or (C) of this section.

(ii) *Eligible institution.* An eligible institution means an institution—

(A) That is organized under the laws of the Commonwealth of Puerto Rico or is the Puerto Rican branch of an institution organized under the laws of another jurisdiction if such branch is engaged in a banking, financing, or similar business defined in § 1.864–4(c)(5)(i), and

(B) That qualifies as an eligible institution under section 4.2.13 of Regulation No. 3582 issued by the Commissioner of Financial Institutions of Puerto Rico (hereinafter "Puerto Rican Regulation No. 3582") or any successor thereof.

(4) *Investments in active business assets*—(i) *In general.* For purposes of section 936(d)(4)(A)(i)(I) and this section and subject to the provisions of paragraph (c)(8) of this section, a loan qualifies as an investment in active business assets if—

(A) The amounts disbursed under the loan to a qualified recipient are promptly applied by (or on behalf of) the qualified recipient solely for capital expenditures for the construction, rehabilitation, improvement, upgrading or expansion of qualified assets described in paragraph (c)(4)(ii) (A), (B) and (E) of this section, for the acquisition of qualified assets described in paragraph (c)(4)(ii) (B), (C) and (E) of this section, for the expenditures described in paragraph (c)(4)(ii)(D) of this section, and, if applicable, for the financing of expenditures incidental to an investment described in paragraph (c)(4)(iii)(A) of this section;

(B) The qualified recipient owns the assets for United States income tax purposes and uses them in a qualified business activity; and

(C) The requirements of paragraph (c)(6) and (c)(7) of this section (regarding temporary periods, financing of previous incurred costs, and the timing of disbursement of the loan or the issuance of obligations to finance an investment) are satisfied.

(ii) *Definition of qualified assets.* For purposes of this section, qualified assets mean—

(A) Real property;

(B) Tangible personal property (such as raw materials, furniture, machinery, or equipment) that is not property described in section 1221(1) and that is either new property or property which at no time during the five-year period preceding the date of acquisition with the loan proceeds was used in a business activity in the qualified Caribbean Basin country in which the property is to be used;

(C) Rights to intangible property that is a patent, invention, formula, process, design, pattern, know-how, or similar item, or rights under a franchise agreement, provided that such rights

(*1*) Were not at any time during the five-year period preceding the date of acquisition with the loan proceeds used in a business activity in the qualified Caribbean Basin country in which the rights are to be used,

(*2*) Do not include United States rights, and

(*3*) The qualified recipient acquiring the rights and the person from whom acquired are not related (within the meaning of section 267(b), using "10 percent" instead of "50 percent" in the places where it appears).

(D) Exploration and development expenditures incurred by a qualified recipient for the purpose of ascertaining the existence, location, extent or quality of any deposit of ore, oil, gas, or other mineral in a qualified Caribbean Basin country, as well as for purposes of developing such deposit (within the meaning of section 616 of the Code and the regulations thereunder); and

(E) Other assets that are not described in paragraph (c)(4)(ii) (A) through (D) of this section and that the Commissioner may, by notice or other guidance published in the Internal Revenue Bulletin or by ruling issued to a qualified financial institution or qualified recipient upon its request, determine to be qualified assets.

(iii) *Incidental expenditures.* An amount in addition to the loan proceeds borrowed to make an investment in active business assets shall be considered an investment in active business assets if such amount is applied to finance expenditures that are incidental to making the investment in active business assets, provided such amount is disbursed at or about the same time the proceeds for making the investment in active business assets are disbursed. For purposes of this section, expenditures that are incidental to an investment in active business assets mean—

(A) A reasonable amount of costs associated with arranging the financing of an investment in active business assets, not to exceed an amount described in section 147(g)(1);

(B) A reasonable amount of installation costs and other reasonable costs associated with placing an active business asset in service in the qualified business activity;

(C) An amount not in excess of 10 percent of the sum of the investment in active business assets and the costs described in paragraph (c)(4)(iii) (A) and (B) of this section to finance reasonable working capital requirements of the recipient's qualified business activity; and

(D) An amount not in excess of 5 percent of the sum of the investment in active business assets and the costs described in paragraph (c)(4)(iii) (A) and (B) of this section for the refinancing of an existing debt of the qualified recipient if such refinancing is incidental to an investment in active business assets.

(iv) *Qualified business activity.* A qualified business activity is a lawful industrial or commercial activity that is conducted as an active trade or business (under principles similar to those described in § 1.367(a)–2T(b) (2) and (3)) in a qualified Caribbean Basin country. A trade or business for purposes of this paragraph (c)(4)(iv) is any business activity meeting the principles of section 367 of the Code and described in Divisions A through I (excluding group 43 in Division E (relating to the United States Postal Service) and groups 84 (relating to museums, art galleries, and botanical and zoological gardens), 86 (relating to membership organizations), and 88 (relating to private households) in Division I) of the 1987 Standard Industrial Classification Manual issued by the Executive Office of the President, Office of Management and Budget, or in the comparable provisions of any successor Standard Industrial Classification Manual that is adopted by the Commissioner of Internal Revenue in a notice, regulation, or other document published in the Internal Revenue Cumulative Bulletin.

(5) *Investments in development projects*—(i) *In general.* For purposes of section 936(d)(4)(A)(i)(II) and this section, and subject to the provisions of paragraph (c)(8) of this section, a loan by a qualified financial institution

qualifies as an investment in a development project if—

(A) The amounts disbursed under the loan are promptly applied by (or on behalf of) the qualified recipient solely for investment in qualified assets described in paragraph (c)(4)(i)(A) and in any land, buildings, or other property functionally related and subordinate to a facility described in paragraph (c)(5)(ii) of this section, determined under principles similar to those described in § 1.103–8(a)(3), for use (under principles similar to those described in § 1.367(a)–2T(b)(5)) in either—

(*1*) A development project described in subdivision (ii) of this paragraph (c)(5) in a qualified Caribbean Basin country; or

(*2*) The performance in a qualified Caribbean Basin country of a non-commercial governmental function described in paragraph (c)(5)(iv) of this section; and

(B) The requirements of paragraph (c)(6) and (c)(7) of this section (regarding temporary periods, financing of previous incurred costs, and the timing of disbursement of the loan or issuance of obligations to finance a development project) are satisfied.

(ii) *Development project.* For purposes of this paragraph (c), a development project is one or more facilities in a qualified Caribbean Basin country that support economic development in that country and that satisfy the public use requirement of paragraph (c)(5)(iii) of this section. Examples of facilities that may meet the public use requirement include but are not limited to—

(A) Transportation systems and equipment, including sea, surface, and air, such as roads, railways, air terminals, runways, harbor facilities, and ships and aircraft;

(B) Communications facilities;

(C) Training and education facilities related to qualified business activities;

(D) Industrial parks, including necessary support facilities such as roads; transmission lines for water, gas, electricity, and sewage; docks; plant sites preparations; power generation; sewage disposal; and water treatment;

(E) Sports facilities;

(F) Convention or trade show facilities;

(G) Sewage, solid waste, water, and electric facilities;

(H) Low-income housing projects intended for occupancy by families and individuals of low or moderate income; and

(I) Hydroelectric generating facilities.

(iii) *Public use requirement.* To satisfy the public use requirement in paragraph (c)(5)(ii) of this section, a facility must serve or be available on a regular basis for general public use, as contrasted with similar types of facilities which are constructed for the exclusive use of a limited number of persons as determined under principles similar to those described in § 1.103–8(a)(2).

(iv) *Non-commercial governmental functions.* For purposes of paragraph (c)(5)(i)(B) of this section, the term "non-commercial governmental functions" refers to activities that, under U.S. standards, are not customarily attributable to or carried on by private enterprises for profit and are performed for the general public with respect to the common welfare or which relate to the administration of some phase of government. For example, the operation of libraries, toll bridges, or local transportation services, and activities substantially equivalent to those carried out by the Federal Aviation Authority, Interstate Commerce Commission, or United States Postal Service, are considered non-commercial governmental functions. For purposes of this section, non-commercial government functions shall not include military activities.

(6) *Rules regarding temporary period.* This paragraph (c)(6) provides rules for determining whether amounts disbursed to a qualified recipient by a qualified financial institution shall be considered to have been promptly applied for the purpose of paragraphs (c)(4)(i)(A) and (c)(5)(i)(A) of this section.

(i) *Prompt application of borrowed proceeds.* Except as otherwise provided in paragraphs (c)(6)(ii) and (c)(7)(iii) of this section, amounts disbursed to a qualified recipient by a financial institution shall be considered to have been promptly applied for the purpose of paragraphs (c)(4)(i)(A) and (c)(5)(i)(A) of this section if the requirements of this paragraph (c)(6)(i) are satisfied.

(A) The amounts are fully expended by, or on behalf of, the qualified recipient for any of the purposes described in paragraph (c)(4)(i)(A) or (c)(5)(i)(A) of this section no later than 6 months from the date of such disbursement. Where the amounts disbursed to the qualified recipient are bond proceeds, the six-month period shall begin on the date of issuance of the bonds.

(B) In the event the qualified financial institution invests any part of the bond proceeds during the temporary period, any proceeds from any such investment shall be paid to the qualified recipient or applied for its benefit.

(ii) *Special rules for construction projects or long-term contracts financed out of bond proceeds.* In the case of a construction project or a long-term contract described in § 1.451–3(b) (1) and (2) that is financed out of bond proceeds, the six-month period described in paragraph (c)(6)(i) of this section shall be extended with respect to the portion of such bond proceeds used to fund the construction project or the long-term contract for such reasonable period of time as shall be necessary for completion. For purposes of this paragraph (c)(6)(ii), the period of time shall be considered reasonable only if—

(A) The period does not exceed three years from the date of issuance of the bonds;

(B) The construction project or the long-term contract that is financed out of bond proceeds was identified as of the date of issue;

(C) A construction and expenditure plan certified by an independent engineer or architect is filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico prior to the date of issue, which makes a reasonable estimate, as of the date of filing of the plan, of the amounts and uses of the bond proceeds and the time of completion, and includes a schedule of progress payments until completion; and

(D) The terms of the construction and expenditure plan are disclosed in the public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the issuance of bonds.

(iii) *Bond proceeds.* For purposes of this paragraph (c), bond proceeds shall mean the proceeds from the issuance of obligations by a qualified financial institution by way of a public offering or a private placement, all or part of which are to be made available directly by the qualified financial institution to the qualified recipient for the financing of an investment in active business assets or a development project that has been identified at the time of issue and is described in a public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the issuance of bonds.

(iv) *Temporary investments*—(A) *During six-month temporary period.* During the six-month temporary period described in paragraph (c)(6)(i) of this section, and during the 30-day temporary period described in paragraph (c)(7)(iii)(A) of this section, loan proceeds disbursed to a qualified recipient, bond proceeds, and proceeds from the investment thereof, may be held in unrestricted yield investments

provided that the income from such investments, if any, is or would be sourced either in Puerto Rico or in a country in which the investment in active business assets or development project is to be made.

(B) *During other temporary periods.* After the expiration of the six-month or 30-day temporary period described in paragraph (c)(6)(iv)(A) of this section, any investment of bond proceeds or investment proceeds within the remainder of the period described in paragraph (c)(6)(ii) or (c)(7)(iii)(B) of this section shall be limited to investments in eligible activities. For purposes of this paragraph (c)(6)(iv)(B), the term "eligible activities" shall mean those investments described in section 6.2.4 of Puerto Rican Regulation No. 3582, as in effect on September 22, 1989.

(7) *Financing of previously incurred costs.* This paragraph (c)(7) provides rules for determining whether loan proceeds which are disbursed after a qualified recipient has paid or incurred part or all of the costs of acquiring active business assets or investing in a development project shall be considered to have been applied for such purposes.

(i) *Replacement of temporary non-qualified financing.* This paragraph (c)(7)(i) prescribes the maximum time limits within which temporary nonqualified financing must be replaced.

(A) In the case of the acquisition of an asset or a facility, the loan proceeds must be disbursed, or the obligations must be issued, no later than six months after the date on which the qualified recipient takes possession of the asset or the facility or, if earlier, places the asset or the facility in service.

(B) In the case of a construction project or a long-term contract, the loan proceeds must be disbursed, or the obligations must be issued, no later than three years after the date on which the first payment is made toward the financeable costs of the construction project or the long-term contract, provided the authorization described in paragraph (c)(1)(i) of this section is issued by the Commissioner of Financial Institutions of Puerto Rico prior to the time of such first payment. The amount of the authorized loan or bond issue may not exceed the sum of—

(*1*) The costs described in paragraph (c)(4)(i)(A) in the case of an investment in active business assets, or the costs described in paragraph (c)(5)(i) of this section in the case of a development project, and

(*2*) The portion of unpaid interest accrued on prior temporary non-qualified financing through the date the qualified loan proceeds are disbursed or the qualified obligations are issued that would be required to be capitalized under U.S. tax rules.

(ii) *Refunding of qualified financing.* A loan or bond issue used to finance a qualified investment in active business assets or in a development project described in paragraph (c)(1) of this section may be refinanced with a qualified new loan or bond issue to the extent of the remaining principal balance on such existing qualified financing, increased by the amount of unpaid interest accrued through the date the new loan proceeds are disbursed or the new obligations are issued that would be required to be capitalized under U.S. tax rules.

(iii) *Temporary periods*—(A) *In general.* In the case of a loan or bond issue described in paragraph (c)(7) (i) or (ii) of this section, the temporary period described in paragraph (c)(6)(i)(A) of this section shall apply but shall be limited to 30 days from the date of disbursement of loan proceeds to the qualified recipient or from the date of issue in the case of a bond issue.

(B) *Special rules for construction projects or long-term contracts financed out of bond proceeds.* In the case of a construction project or a long-term contract financed out of bond proceeds, the 30-day period described in paragraph (c)(7)(iii)(A) of this section shall be extended with respect to the portion of such bond proceeds used for the permanent financing of the construction project or the long-term contract for such reasonable period of time as shall be necessary for completion. For purposes of this paragraph (c)(7)(iii)(B), the period of time shall be considered reasonable only if—

(*1*) The period does not exceed three years from the date of issuance of the bonds;

(*2*) A construction and expenditure plan certified by an independent engineer or architect is filed with, and approved by, the Commissioner of Financial Institutions of Puerto Rico prior to the date of issue, which makes a reasonable estimate, as of the date of issue, of the amounts and uses of the bond proceeds and the time of completion, and includes a schedule of progress payments until completion; and

(*3*) The terms of the construction and expenditure plan are disclosed in the public offering memorandum, private placement memorandum, or similar document prepared for information or disclosure purposes in relation to the bond issue.

(8) *Miscellaneous operating rules*—(i) *Sale and leaseback.* An asset that is acquired and leased back to the person from whom acquired does not constitute an investment in an active business asset.

(ii) *Use of asset in qualified business activity.* For purposes of paragraph (c)(4)(i)(B), an asset shall be considered used or for use in a qualified business activity if it is used or for use in such activity under principles similar to those described in § 1.367(a)-2T(b)(5), or a successor provision.

(iii) *Definition of capital expenditures.* For purposes of this paragraph (c), capital expenditures mean those expenditures described in section 263(a) of the Code (without regard to paragraphs (A) through (G) of section 263(a)(1)).

(iv) *Loans through certain financial intermediaries.* A loan by a qualified financial institution shall not be disqualified as an investment in active business assets or in a development project merely because the proceeds are first lent to a financial intermediary (as defined in paragraph (c)(8)(iv)(H) of this section) which, in turn, on-lends the proceeds directly to a qualified recipient, provided the requirements of this paragraph (c)(8)(iv) are satisfied. Similarly, a loan by a qualified financial institution shall not be disqualified as an investment in active business assets or in a development project merely because the loan transaction is processed by the central bank of issue of the country into which the loan is made pursuant to, and solely for purposes of complying with, the exchange control laws or regulations of such country.

(A) The loan to the qualified recipient satisfies the requirements of paragraph (c)(4)(i) of this section in the case of an investment in active business assets, or of paragraph (c)(5)(i) of this section in the case of an investment in a development project.

(B) The qualified recipient and the active business assets or development project in which the proceeds are to be invested have been identified prior to disbursement of any part of the proceeds by the qualified financial institution to the financial intermediary.

(C) The effective interest rate charged by the qualified financial institution to the financial intermediary does not exceed the average interest rate paid by the qualified financial institution with respect to its eligible funds, increased by such number of basis points as is required to provide reasonable compensation to the qualified financial institution for services performed and risks assumed with respect to the loan to the financial intermediary that are not ordinarily required to be performed or assumed with respect to a deposit, loan,

repurchase agreement or other transfer of eligible funds with another qualified financial institution. The average interest rate shall be the average rate, determined on a daily basis, paid by the qualified financial institution on its eligible funds over the most recent quarter preceding the date on which the rate on the loan to the financial intermediary is committed.

(D) The effective interest rate charged by the financial intermediary to the qualified recipient does not exceed the effective interest rate charged to the financial intermediary by the qualified financial institution, increased by such number of basis points as is required to provide reasonable compensation to the financial intermediary as determined by the Commissioner of Financial Institutions of Puerto Rico.

(E) The financial intermediary borrows from the qualified financial institution under substantially the same terms as it lends to the qualified recipient. In particular, both loans must have disbursement terms, repayment schedules and maturity dates for interest and principal amounts such that the financial intermediary does not retain for more than 48 hours any of the funds disbursed by the qualified financial institution nor any of the funds paid by the qualified recipient in repayment of principal or interest on the loan.

(F) The financial institution and the financial intermediary agree to comply with the due diligence requirements described in paragraphs (c)(11), (c)(12), and (c)(13) of this section;

(G) The time periods and temporary investments rules in paragraphs (c) (6) and (7) of this section are complied with; and

(H) For purposes of this paragraph (c), the financial intermediary is an active trade or business which a person maintains in a qualified Caribbean Basin country and which consists of a banking, financing or similar business as defined in § 1.864–4(c)(5)(i) (other than a central bank of issue) or is a public international organization, the principal purpose of which is to foster economic development in the Caribbean Basin beneficiary countries described in section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Public Law 98–67 (Aug. 5, 1983), 97 Stat. 384, 19 U.S.C. 2702(a)(1)(A).

For purposes of paragraph (c)(8)(iv) (C) and (D) of this section, the determination of whether compensation is reasonable shall be made in relation to normal commercial practices for comparable transactions carrying a similar degree of commercial, currency and political risk. Reasonable credit enhancement fees and other reasonable fees and amounts charged to the financial intermediary or the qualified recipient with respect to the loan transaction in addition to interest shall be added to the interest cost in determining the effective interest rate.

(v) *Privatization.* [Reserved]

(9) *Qualified recipient.* For purposes of this section, a qualified recipient is any person described in subdivision (i) or (ii) of this paragraph (c)(9). The term "person" means a person described in section 7701(a)(1) or a government (within the meaning of § 1.892–2T(a)(1)) of a qualified Caribbean Basin country.

(i) In the case of an investment described in paragraph (c)(4) of this section (relating to investments in active business assets), a qualified recipient is a person that carries on a qualified business activity in a qualified Caribbean Basin country, and complies with the agreement and representation requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(ii) In the case of an investment described in paragraph (c)(5) of this section (relating to investments in development projects), a qualified recipient is the borrower (including a person empowered by the borrower to authorize expenditures for the investment in the development project) that has authority to comply with the agreement and representation requirements described in paragraph (c)(11)(i) of this section at all times during the period in which the investment remains outstanding.

(10) *Investments in a qualified Caribbean Basin country*—(i) *Rules for determining the place of an investment.* The rules of this paragraph (c)(10)(i) shall apply to determine the extent to which an investment in an active business asset or a development project will be considered made in a qualified Caribbean Basin country.

(A) An investment in real property is considered made in the qualified Caribbean Basin country in which the real property is located.

(B) Except as otherwise provided in this paragraph (c)(10)(i)(B), an investment in tangible personal property is considered made in a qualified Caribbean Basin country so long as the tangible personal property is predominantly used in that country. Whether property is used predominantly in a qualified Caribbean Basin country shall be determined under principles similar to those described in § 1.48–1 (g)(1), (g)(2)(ii), (g)(2)(iv), (g)(2)(vi), (g)(2)(viii), and (g)(2)(x) (relating to investment tax credits for property used outside the United States) as in effect on December 31, 1986. A vessel, container, or aircraft shall be considered for use predominantly in a qualified Caribbean Basin country in any year if it is used for transport to and from such country with some degree of frequency during that year and at least 50 percent of the income from the use of such vessel, container or aircraft for that year is sourced in such country under principles similar to those described in section 863(c) (1) and (2) (relating to source rules for certain transportation income). Cables and pipelines which are permanently installed as part of a communication or transportation system between a qualified Caribbean Basin country and another country or among several countries which include a qualified Caribbean Basin country shall be considered used in a qualified Caribbean Basin country to the extent of 50 percent of the portion of the facility that directly links the qualified country to another country or to a hub, unless it is established by notice or other guidance published in the Internal Revenue Bulletin or by ruling issued to a qualified institution or qualified recipient upon request that it is appropriate to attribute a greater portion of the cost of the facility to the qualified Caribbean Basin country.

(C) An investment in rights to intangible property is considered made in a qualified Caribbean Basin country to the extent such rights are used in that country. Where rights to intangible property are used shall be determined under principles similar to those described in § 1.954–2T(b)(3)(vii) or a successor provision.

(ii) *Qualified Caribbean Basin country.* For purposes of this section, the term "qualified Caribbean Basin country" means any beneficiary country (within the meaning of section 212(a)(1)(A) of the Caribbean Basin Economic Recovery Act, Public Law 98–67 (Aug. 5, 1983), 97 Stat. 384, 19 U.S.C. 2702(a)(1)(A)), which meets the requirements of subdivisions (i) and (ii) of section 274(h)(6)(A) and the U.S. Virgin Islands, and includes the territorial waters and continental shelf thereof.

(11) *Agreements and representations by qualified recipients and financial intermediaries*—(i) *In general.* In order for an investment to be considered a qualified investment under section 936(d)(4) and paragraph (c)(1) of this section, a qualified recipient must certify to the qualified financial institution (or to the financial intermediary, if the loan is made through a financial

intermediary) on the date of closing of the loan agreement and on each anniversary date thereof, that it is a qualified recipient described in paragraph (c)(9) of this section. In addition, the qualified recipient must agree in the loan agreement with the qualified financial institution (or with the financial intermediary, if the loan is made through a financial intermediary):

(A) To use the funds at all times during the period the loan is outstanding solely for the purposes and in the manner described in paragraph (c)(4) of this section (regarding investment in active business assets) or in paragraph (c)(5) of this section (regarding investment in development projects);

(B) To comply with the requirements of paragraph (c)(6) of this section (regarding time periods within which the funds must be invested and temporary investments) and paragraph (c)(7) of this section (regarding the time periods within which funding for investments must be secured and the refinancing of existing funding);

(C) To notify the Assistant Commissioner (International), the qualified financial institution (or the financial intermediary, if the loan is made through a financial intermediary), and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section if it no longer is a qualified recipient or if, for any other reason, the investment has ceased to qualify as a qualified investment described in paragraph (c)(1) of this section, promptly upon the occurrence of such disqualifying event; and

(D) To permit examination by the office of the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all necessary books and records that are sufficient to verify that the funds were used for investments in active business assets or development projects in conformity with the terms of the loan agreement.

(ii) *Certification by a financial intermediary.* In the case of a loan by a qualified financial institution to a financial intermediary, the financial intermediary must certify to the qualified financial institution (using the procedures described in paragraph (c)(11)(i) of this section) that it is a financial intermediary described in paragraph (c)(8)(iv)(H) of this section, and must furnish to the qualified financial institution a copy of the qualified recipient's certification described in paragraph (c)(11)(i) of this section and of its loan agreement with the qualified recipient. In addition, the financial intermediary must agree in the loan agreement with the qualified financial institution:

(A) To comply with the requirements of paragraph (c)(8)(iv) of this section; and

(B) To permit examination by the office of the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all its necessary books and records that are sufficient to verify that the funds were used in conformity with the terms of the loan agreements.

(12) *Certification requirements.* In order for an investment to be considered a qualified investment under section 936(d)(4), section 936(d)(4)(C)(i) requires that both the person in whose trade or business such investment is made and the financial institution certify to the Secretary of the Treasury and the Commissioner of Financial Institutions of Puerto Rico that the proceeds of the loan will be promptly used to acquire active business assets or to make other authorized expenditures. This certification requirement is satisfied as to the qualified financial institution, the financial intermediary (if any), and the qualified recipient if the qualified financial institution submits a certificate to both the Assistant Commissioner (International) and to the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section upon authorization of the investment by the Commissioner of Financial Institutions and, in any event, prior to the first disbursement of the loan proceeds to the qualified recipient or to the financial intermediary (if any), in which the qualified financial institution—

(i) Represents that, as of the date of the certification, the qualified recipient and the financial intermediary (if any) have complied with the requirements described in paragraph (c)(11) of this section;

(ii) Describes the important terms of the loan to the financial intermediary (if any) and to the qualified recipient, including the amount of the loan, the nature of the investment, the basis for its qualification as an investment in active business assets or a development project under this section, the identity of the financial intermediary (if any) and of the qualified recipient, the qualified Caribbean Basin country involved, and the nature of the collateral used, including any guarantee; and

(iii) Agrees to permit examination by the Assistant Commissioner (International) (or by the office of any District Director authorized by the Assistant Commissioner (International)) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) of all its necessary books and records that are sufficient to verify that the funds were used for investments in active business assets or development projects in conformity with the terms of the loan agreement or agreements with the financial intermediary (if any) and with the qualified recipient.

(13) *Continuing due diligence requirements.* In order to maintain the qualification for an investment under paragraph (c)(1) of this section, the continuing due diligence requirements described in this paragraph (c)(13) must be satisfied.

(i) *Requirements of qualified recipient.* A qualified recipient must—

(A) Submit annually to the qualified financial institution or to the financial intermediary from which its qualified funds were obtained a copy of its most recent annual financial statement accompanied by an opinion of its independent auditors disclosing the amount of the loan, the current outstanding balance of the loan, describing the assets financed with such loan and the qualified business activity in which such assets are used or the development project for which the loan is used, and stating that there are no reasons to doubt that the loan proceeds have been properly used and continue to be properly used, and

(B) Act in a manner consistent with its representations and agreements described in paragraph (c)(11) of this section.

(ii) *Requirements of qualified financial institutions.* Except as otherwise provided in paragraph (c)(13)(iii) of this section, a qualified financial institution described in paragraph (c)(3) of this section must maintain in its records and have available for inspection the documentation described in paragraph (c)(13)(ii) (A) or (B) of this section. In addition, the qualified financial institution is required to notify the Assistant Commissioner (International) and the Commissioner of Financial Institutions of Puerto Rico (or his delegate) pursuant to paragraph (c)(14) of this section upon becoming aware that a loan has ceased to be an investment in active business assets or a development project under this section. For purposes of this paragraph (c)(13)(ii), multiple loans for investment in a single qualified business activity or

development project will be aggregated in determining what due diligence requirements apply.

(A) In the case of a disbursement to a qualified recipient of loan proceeds amounting in the aggregate, at any time, to $1,000,000 or less, the following documents must be maintained and available for inspection:

(*1*) The loan application or other similar document;

(*2*) The financial statements of the qualified recipient filed as part of the loan application;

(*3*) The statement required by section 6.4.3(a)(iii) of Puerto Rican Regulation No. 3582 or any successor thereof, signed by the qualified recipient (or its duly authorized representative), acknowledging the receipt of the loan proceeds, describing the assets financed with such loan and the business activity in which such assets are to be used or the development project for which the funds will be utilized, the collateral to be provided for the transaction including any guarantee, and the basis for its qualification as a qualified recipient; and

(*4*) The loan documents, if any.

(B) In the case of a disbursement to a qualified recipient of loan proceeds amounting in the aggregate, at any time, to more than $1,000,000, the following documents must be maintained and available for inspection, in addition to the documents required by paragraph (c)(13)(ii)(A) of this section:

(*1*) A memorandum of credit prepared and signed by an officer of the qualified financial institution containing the details of the investigation and review that it conducted in order to evaluate whether the investment is qualified under paragraph (c)(1) of this section and his opinion that there is no reasonable ground for belief that the qualified funds will be diverted to a use that is not permitted under the provisions of this section; in making this investigation and review, factors that must be utilized are ones similar to those listed in Puerto Rico Regulation No. 3582, section 6.4.2;

(*2*) The annual financial statement of the qualified recipient; and

(*3*) The written report of an officer of the qualified financial institution documenting his discussions, both before and after the disbursement of the loan proceeds, with each recipient's accounting, financial and executive personnel with respect to the proposed and actual use of the loan proceeds and his analysis of the annual financial statements of the qualified recipient including an analysis of the statement of sources and uses of funds. After the loan disbursement, such discussions and review shall occur annually during the term of the loan. Such report shall include the conclusion that in such officer's opinion there is no reasonable ground for belief that the qualified recipient is improperly utilizing the funds.

(iii) *Requirements in the case of a financial intermediary.* Where a qualified financial institution lends funds to a financial intermediary which are on-lent to a qualified recipient—

(A) The obligation to maintain the documentation described in paragraph (c)(13)(ii) (A) or (B) of this section shall apply only to the financial intermediary and not to the qualified financial institution and the provisions of paragraph (c)(13)(ii) (A) or (B) shall be read so as to impose on the financial intermediary any obligation imposed on the qualified financial institution.

(B) The financial intermediary shall forward annually to the qualified financial institution a copy of the documentation it is required to maintain in its records pursuant to the provisions of this paragraph (c)(13)(iii) and shall notify the Assistant Commissioner (International), the Commissioner of Financial Institutions of Puerto Rico (or his delegate), and the qualified financial institution pursuant to paragraph (c)(14) of this section upon becoming aware that a loan has ceased to be an investment in active business assets or a development project under this section. The qualified financial institution must maintain in its records and have available for inspection the copied documentation furnished by the financial intermediary pursuant to this paragraph (c)(13)(iii)(B).

(C) The qualified financial institution shall cause one of its officers to prepare a written report documenting his analysis of the copied documentation furnished by the financial intermediary pursuant to paragraph (c)(13)(iii)(B) of this section, his discussions, both before and after the disbursement of the loan proceeds, with the financial intermediary's accounting, financial and executive personnel with respect to the proposed and actual use of the loan proceeds, and his analysis of the annual financial statements of the qualified recipient including an analysis of the statement of sources and uses of funds. After the loan disbursement, such discussions and review shall occur annually during the term of the loan. Such report shall include the conclusion that in such officer's opinion there is no reasonable ground for belief that the qualified recipient is improperly utilizing the funds.

(14) *Procedures for notices and certifications.* Notices and certifications to the Assistant Commissioner (International) required under paragraphs (c)(11), (c)(12) and (c)(13) of this section shall be addressed to the attention of the Assistant Commissioner (International), Office of Taxpayer Service and Compliance, IN:C, 950 L'Enfant Plaza South, SW., Washington, DC 20024. Notices and certifications to the Commissioner of Financial Institutions of Puerto Rico required under paragraphs (c)(11), (c)(12), and (c)(13) of this section shall be addressed as follows: Commissioner of Financial Institutions, GPO Box 70324, San Juan, Puerto Rico 00936.

(15) *Effective dates.* This paragraph (c) is effective for investments by a possessions corporation in a financial institution that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions of Puerto Rico after September 22, 1989.

OMB Control Numbers Under the Paperwork Reduction Act

PART 602—[AMENDED]

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 602.101 [Amended]

Par. 4. Section 602.101(c) is amended by inserting in the appropriate place in the table: "1.936-10T(c)..... 1545-1138."

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: August 28, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89-22348 Filed 9-21-89; 8:45 am]

BILLING CODE 4830-01-M

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26 CFR Parts 5h and 602

[T.D. 8267]

RIN 1545-AM76

Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the time and manner of making certain elections under the Technical and Miscellaneous Revenue Act of 1988. These regulations provide guidance to persons making the elections. The text

of the temporary regulations set forth in this document also serves as the text of the proposed regulations for the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective November 10, 1988, and, except as otherwise provided, the regulations apply to elections made on or after that date.

FOR FURTHER INFORMATION CONTACT: Grace Matuszeski, 202-343-2382 (not a toll free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1545-1112. The estimated annual burden per respondent varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of .28 hours.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble of the cross-reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

This document contains temporary regulations relating to certain elections under various sections of the Internal Revenue Code of 1986 and the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342 (the Act). These regulations are added to the Temporary Regulations—Elections Under Various Public Laws (26 CFR part 5h).

Explanation of Provisions

Regulations § 5h.6(a)(1) lists certain elections that are provided by the Act and addressed in this regulation. In some cases, § 5h.6(a)(1) also addresses the time and manner of making the election. The general rules regarding the time and manner for making the listed elections are provided in § 5h.6(a) (2) and (3), respectively. Special rules regarding the time and manner for making certain elections listed in § 5h.6(a)(1) are also contained in paragraphs (b) through (i) of § 5h.6. Election provisions provided by the Act that are not addressed in this regulation may be addressed in other regulation projects. Certain of these elections are listed in § 5h.6(j). Regulations § 5h.6(k) provides that additional information may be required from taxpayers after an election has been filed.

Special Analyses

It has been determined that these regulations are not major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. A general notice of proposed rulemaking is not required by 5 U.S.C. 553 for interpretive regulations. Therefore, these rules do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6, and a Regulatory Flexibility Analysis is not required.

Drafting Information

The principal author of these regulations is Grace Matuszeski, Office of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects

26 CFR Part 5h

Deficit Reduction Act of 1984, Elections under various public laws, Income taxes, Tax Reform Act of 1986, Technical and Miscellaneous Revenue Act of 1988.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

Accordingly, the following temporary regulations are adopted under 26 CFR parts 5h and 602:

PART 5h—TEMPORARY REGULATIONS—ELECTIONS UNDER VARIOUS PUBLIC LAWS

Paragraph 1. The authority for part 5h is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * * Section 5h.6 also issued under 26 U.S.C. 1(i)(7), 41(h), 42(b)(2)(A)(ii), 42(d)(3), 42(f)(1), 42(g)(3), 42(i)(2)(B), 42(j)(5)(B), 121(d)(9), 142(i)(2), 165(l), 168(b)(2), 219(g)(4), 245(a)(10), 263A(d)(1), 263A(d)(3)(B), 263A(h), 460(b)(3), 643(g)(2), 831(b)(2)(A), 835(a), 865(f), 865(g)(3), 865(h)(2), 904(g)(10), 2056(b)(7)(C)(ii), 2056A(d), 2523(f)(6)(B), 3127, and 7520(a). Section 5h.6 also issued under the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342, sections 1002(a)(23)(B), 1005(c)(11), 1006(d)(15), 1006(j)(1)(C), 1006(t)(18)(B), 1012(n)(3), 1014(c)(1), 1014(c)(2), 2004(j)(1), 2004(m)(5), 5012(e)(4), 6181(c)(2), and 6277, and under the Tax Reform Act of 1986, 100 Stat. 2746, section 905(a).

§ 5h.5 [Amended]

Par. 2. Section 5h.5 is amended by revising the entry in the fourth column of the table in paragraph (a)(1) of that section, for the item in the first column which reads "905(a)" to read as follows: "Taxable years begining after December 31, 1981 [See the cross-reference in paragraph (f) of this section.]"

§ 5h.5 [Amended]

Par. 3. Section 5h.5 is amended by revising paragraph (f) to read as follows:

* * * * *

(f) *Cross-reference.* See § 5h.6(d) for rules on both the election under section 905(a) of the Act, relating to section 165(l)(1), and the related election under section 165(l)(5), added by section 1009(d) of the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342. An election under section 165(l) is available only to qualified individuals and, in general, applies to reasonably estimated losses on deposits in an insolvent or bankrupt financial institution.

Par. 4. A new § 5h.6 is added immediately after § 5h.5 to read as follows:

§ 5h.6 Time and manner of making certain elections under the Technical and Miscellaneous Revenue Act of 1988.

(a) *Miscellaneous elections*—(1) *Elections to which this paragraph applies.* This paragraph applies to the elections set forth below provided under the Technical and Miscellaneous Revenue Act of 1988, 102 Stat. 3342 (the Act). General rules regarding the time for making the elections are provided in paragraph (a)(2) of this section. General rules regarding the manner for making the elections are provided in paragraph (a)(3) of this section. Special rules regarding the time and manner for making certain elections are contained in paragraphs (a) through (i) of this section. In this paragraph (a)(1), a cross-reference to a special rule applicable to an election is shown in brackets at the

end of the description of the "Availability of Election." Paragraph (j) of this section lists certain elections provided under the Act that are not addressed in this section. Paragraph (k) of this section provides that additional information with respect to elections may be required by future regulations or revenue procedures.

Section of act	Section of code	Description of election	Availability of election
1002 (a)(11)(A)	168(b)(2)	Election to depreciate property using the 150 percent declining balance method for one or more classes of property for any taxable year.	For property placed in service after December 31, 1986, the election must be made for the taxable year in which the property is placed in service. For taxable years ending before January 1, 1989, taxpayers have until January 20, 1990, to amend their returns to elect the 150 percent declining balance method, regardless of whether the taxpayer had used or elected to use a different method for property placed in service during those taxable years. The election will apply to all property in the class placed in service during the taxable year for which the election is made.
1002(a)(23)(B)	168(d)(3)(B)	Election to disregard property placed in service and disposed of in the same taxable year in applying the 40 percent test to determine if the mid-quarter convention applies.	Available for property placed in service in taxable years beginning on or before March 31, 1988. Election will apply to all property placed in service and disposed of during the taxable year for which the election is made.
1002(l)(1)(A)	42(b)(2)(A)(ii)	Election to use the applicable percentage for a month other than the month in which a building is placed in service.	Available for qualified buildings placed in service after December 31, 1987, and before January 1, 1990 (before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code), and with respect to which either a binding agreement is made as to the allocable credit dollar amount or tax-exempt bonds are issued. [See paragraph (b) of this section.]
1002(l)(2)(B)	42(f)(1)	Election to defer the beginning of the credit period for the low-income housing credit.	Available for qualified buildings placed in service after December 31, 1986, and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code).
1002(l)(4)	42(d)(3)(B)	Election to exclude excess costs of disproportionate units.	Available for qualified buildings placed in service after December 31, 1986, and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code).
1002(l)(12)	42(g)(3)(B)(i)	Election to aggregate buildings in a low-income housing project to satisfy the minimum set-aside requirement elected under section 42(g)(1) of the Code.	Available for qualified buildings placed in service after December 31, 1986, and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code).
1002(l)(19)(B)	42(i)(2)(B)	Election to reduce eligible basis by outstanding balance of Federal loan subsidy or proceeds of tax-exempt obligation.	Available for qualified buildings placed in service after December 31, 1986, and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code).
1005(c)(11)	469,163	Election to treat certain carryovers of disallowed investment interest expense as passive activity deductions for the first taxable year beginning after December 31, 1986.	Available for investment interest that is disallowed for the last taxable year beginning before January 1, 1987, and is properly allocable to a passive activity for the first taxable year beginning after December 31, 1986. [See paragraph (c) of this section.]
1006(d)(15)	382	As a general rule, a firm commitment underwriter of an offering of a loss corporation's stock made before September 19, 1986 (January 1, 1989, for an institution described in section 591) is not treated as acquiring underwritten stock if it is disposed of pursuant to the offering on or before 60 days after the initial offering. The loss corporation may elect not to apply the general rule.	Available to any loss corporation to which the general rule would otherwise apply. The election is to be made by filing a statement with the District Director with whom the loss corporation would file its Federal income tax return. The statement must identify the election as an election under section 1006(d)(15) of the Act and must (1) contain the taxpayer's name, address, and employee identification number, (2) identify the transaction to which the election relates, (3) represent that the conditions for making the election have been satisfied, and (4) be signed by a person authorized to sign the Federal income tax return of the loss corporation.
1006(j)(1)(C)	171(e)	Election to reduce interest payments received on certain bonds by allocable bond premium in accordance with section 171(e) of the Code.	Available for obligations acquired after October 22, 1986, and before January 1, 1988.
1006(t)(18)(B)	860F(e)	Election not treat a REMIC (real estate mortgage investment conduit) as a partnership for purposes of determining who may sign the REMIC return.	Available for REMICs with a start-up date (as defined in section 860G(a)(9) of the Code, as in effect on November 9, 1988) before November 10, 1988. The election is made by attaching a statement to the amended tax return for tax year 1987 or to the tax return for the first taxable year for which the election is to be effective.
1008(c)(4)(A)	460(b)(3)	Election not to discount an amount received or accrued after completion of a contract to its value as of the completion of the contract for purposes of applying the look-back method.	Effective as if included in the Tax Reform Act of 1986 (1986 Act) (available for contracts entered into after February 28, 1986). The election must be made on a contract-by-contract basis by attaching a statement to the tax return for the first year after completion in which the taxpayer includes in income any adjustments to the contract price or deducts any adjustments to contract costs (or, if later, the first tax return filed after October 23, 1989).
1009(d)	165(1)	Election to treat amount of reasonably estimated loss on a deposit in an insolvent or bankrupt qualified financial institution as a loss described in either section 165(c) (2) or (3) of the Code and incurred in the taxable year for which the election is made.	Available for taxable years beginning after December 31, 1981. [See paragraph (d) of this section.]
1010(f)(1)	831(b)(2)(A)	Election for insurance companies other than life to use alternative tax under certain circumstances.	Available for taxable years beginning after December 31, 1986.
1010(f)(2)	835(a)	Election for an interinsurer or reciprocal underwirter mutual insurance company subject to section 831(a) of the Code to be subject to section 835(b) limitation.	Effective January 1, 1963.

Section of act	Section of code	Description of election	Availability of election
1011(a)	219(g)(4)	Election to treat a married individual as not married for purposes of certain contributions made to an individual retirement plan for 1987.	Available to a married individual who (1) was an active participant during 1987, (2) lived apart from the other spouse during the entire 1987 calendar year, (3) filed a separate income tax return for 1987, (4) had adjusted gross income of not more than $35,000 for 1987, and (5) made a contribution to an individual retirement plan for 1987.
1012(d)(4)	865(f)	Election to treat an affiliate and its wholly-owned subsidiaries as one corporation.	Shareholder-level election, available, subject to certain conditions, to United States residents selling stock in an affiliate which is a foreign corporation. Available for taxable years beginning after December 31, 1986.
1012(d)(6)	865(g)(3)	Election to treat a corporation and its wholly-owned subsidiaries as one corporation.	Shareholder-level election, available only to individual bona fide residents of Puerto Rico, if the corporate group is engaged in active trade or business in Puerto Rico and meets a gross income test. Available for taxable years beginning after December 31, 1986.
1012(d)(8)	865(h)(2)	Election to apply treaty source rule to treat gain from a sale of an intangible or of stock in a foreign corporation as foreign source.	Taxpayer election for treatment of gain on the disposition of certain stocks and intangibles. Available for taxable years beginning after December 31, 1986.
1012(1)(2)	245(a)(10)	Election to apply treaty source rules to treat dividends received from a qualified 10-percent owned foreign corporation as foreign source.	Available to corporations for distributions out of earnings and profits for taxable years beginning after December 31, 1986.
1012(n)(3)	936	Election to reduce the amount of qualified possession source investment income for certain corporations that fail the 75 percent active trade or business income requirement of section 936(a)(2)(B) of the Code due to section 1231(d) of the 1986 Act.	Corporate-level election, available for any taxable year beginning in 1987 or 1988.
1012(bb)(4)	904(g)(10)	Election to apply treaty source rules (in lieu of rules in section 904(g) of the Code) to treat an amount derived from a U.S.-owned foreign corporation as foreign source.	Available generally beginning July 18, 1984 (the amendment is to take effect as if included in the amendment made in section 121 of the Tax Reform Act of 1984).
1014(c)(1)	664(b)	Election by a beneficiary of a trust to which section 664 of the Code applies to obtain certain benefits of section 1403(c)(2) of the 1986 Act, relating to the ratable inclusion of certain income over 4 taxable years.	Available for taxable years beginning after December 31, 1986, provided the trust was required to change its taxable year under section 1403(a) of the 1986 Act. Election is made by attaching a statement to an amended return for the trust beneficiary's first taxable year beginning after December 31, 1986. Amended return must be filed on or before January 20, 1990. If no such election is filed, the benefits of section 1403(c)(2) are waived.
1014(c)(2)	652, 662	Election by any trust beneficiary (other than a beneficiary of a trust to which section 664 of the Code applies), to waive the benefits of section 1403(c)(2) of the 1986 Act.	Available for taxable years beginning after December 31, 1986. Election is made by attaching a statement to an amended return for the trust beneficiary's first taxable year beginning after December 31, 1986. Amended return must be filed on or before January 20, 1990.
1014(d)(3)(B), 1014(d)(4).	643(g)(2)	Election to have certain payments of estimated tax made by a trust or estate treated as paid by the beneficiary.	Available for taxable years beginning after December 31, 1986. In the case of an estate, the election is available only for a taxable year reasonably expected to be the estate's last taxable year. Election must be made by the fiduciary of the trust or estate on or before the 65th day after the close of the taxable year for which the election is made. The election must be made by that date by filing Form 1041-T with the Internal Revenue Service Center where the trust's return for such taxable year is required to be filed. The trust's return (or amended return) for that year must include a copy of the Form 1041-T.
2004(j)(1)	1503(e)	Election, made by an affiliated group filing a consolidated return upon the disposition of intragroup stock on or before December 15, 1987, to reduce the disposing member's basis in the indebtedness of the subsidiary member whose stock has been disposed of, in lieu of taking into account as negative basis the "unrecaptured amount" allocable to the stock disposed of.	Available to an affiliated group filing a consolidated return in which a member disposes of intragroup stock on or before December 15, 1987.
2004(m)(5)	384	Election to have amendments (to the limitation on use of preacquisition losses to offset corporate built-in gains) made by section 2004(m) of the Act not apply in any case where the acquisition date is before March 31, 1988.	Available when the acquisition date is before March 31, 1988. Election must be made not later than the later of the due date (including extensions) for filing the return for the taxable year of the acquiring corporation in which the acquisition date occurs or March 10, 1989.
4004(a)	42(j)(5)(B)	Election to have certain partnerships not treated as the taxpayer to which the low-income housing credit is allowable.	Available for qualified buildings placed in service after December 31, 1986, and before January 1, 1990 (after December 31, 1987, and before January 1, 1992, for buildings described in section 42(h)(1)(E) of the Code), and owned by partnerships with 35 or more partners. [See paragraph (b) of this section.]
4008(b)	41(h)	Election to have the research credit under secction 41 of the Code not apply for any taxable year.	Available in any taxable year beginning after December 31, 1988. The election is made by not claiming the research credit on an original return, or by filing an amended return on which no research credit is claimed, at any time before the expiration of the 3-year period beginning on the last day prescribed by law for filing the return for the taxable year (determined without regard to extensions). The election may be revoked within the above-described 3-year period by filing an amended return on which the credit is claimed.
5012(e)(4)	7002A(c)(3) 72(e)	Election to recognize gain on exchange of life insurance contracts to avoid the characterization of life insurance contract as a modified endowment contract.	Available for contracts entered into after June 20, 1988, and before November 6, 1988, which are exchanged before February 10, 1989.

Section of act	Section of code	Description of election	Availability of election
5031(a)	7520(a)	Election to use 120 percent of the Applicable Federal Midterm rate for either of the two months preceding a valuation date in valuing certain interests transferred to charity for which an income, estate, or gift tax charitable deduction is allowable.	Available in cases where the valuation date occurs on or after May 1, 1989. The election is made by attaching a statement to the income, estate or gift tax return on which the charitable deduction is initially claimed. The statement must contain the following: (1) A statement that the election under section 7520(a) of the Code is being made; (2) a description of the interest being valued; (3) the applicable valuation date absent this election; and (4) the month and rate (120 percent of the Applicable Federal Midterm rate rounded to the nearest $\frac{2}{10}$ths of 1 percent) as to which the election is made.
5033(a)(2)	2056(d)	Election to treat a trust for the benefit of a surviving spouse who is not a U.S. citizen as a Qualified Domestic Trust, transfers to which are deductible under section 2056(a) of the Code.	Available in the case of estates of decedents dying after November 11, 1988. The election is made by the executor on the last Federal estate tax return filed by the executor before the due date of the return, or if a timely return is not filed by the executor, on the first estate tax return filed by the executor after the due date.
6006(a)	1(i)(7)	Election to include certain unearned income of a child on the parent's return.	Available for taxable years beginning after December 31, 1988. The election must be made in the manner prescribed by the appropriate forms for the parent's return for the year for which the election is effective. The election must be made by the due date (taking extensions into account) of such tax return.
6011	121(d)(9)	Election to exclude gain on the sale of a principal residence by certain incapacitated taxpayers age 55 or over.	Election may be made for a sale or exchange after September 30, 1988, by a taxpayer who becomes physically or mentally incapable of self-care and meets the required use rule provided in section 121(d)(9) of the Code. For the time and manner of making the election see § 1.121-4 of the Income Tax Regulations.
6026(a)	263A(h)	Election for certain authors, photographers, and artists to apply the exemption from the uniform capitalization rules for the first taxable year ending after November 10, 1988.	Available for the first taxable year ending after November 10, 1988. An eligible taxpayer will be treated as having made the election if the taxpayer reports income and expenses for the first taxable year ending after November 10, 1988 in accordance with the exemption from section 263A of the Code.
6026(b)(1)	263A(d)(1)	Revocation of prior election under section 263A(d)(3) of the Code (relating to the capitalization of certain expenses for the production of animals).	Election for any taxable year beginning before January 1, 1989, may be revoked for the first taxable year beginning after December 31, 1988.
6026(c)	263A(d)(3)(B)	Election by eligible taxpayers not to have section 263A of the Code apply to costs incurred in the planting, cultivation, maintenance, or development of pistachio trees.	Available without the consent of the Commissioner for the first taxable year beginning after December 31, 1986, during which the taxpayer engages in the planting, cultivation, maintenance, or development of pistachio trees. Consent must be obtained from the Commissioner for the election to be made for any subsequent taxable year.
6152(a), 6152(c)(3).	2056(b)(7)(C)(ii)	Election to treat a survivor annuity payable to a surviving spouse that is otherwise deductible under section 2056(b)(7)(C) of the Code as a nondeductible terminable interest.	Available in the case of estates of decedents dying after December 31, 1981, and in no event will the time for making the election expire before November 11, 1990. [See paragraph (e) of this section.]
6152(b), 6152(c)(3).	2523(f)(6)(B)	Election to treat a joint and survivor annuity in which the donee spouse has a survivorship interest that is otherwise deductible under section 2523(f)(6)(A) of the Code as a nondeductible terminable interest.	Available in the case of transfers made after December 31, 1981, and in no event will the time for making the election expire before November 11, 1990. [See paragraph (f) of this section.]
6152(c)(2)	2056(b)(7)(C)(ii), 2523(f)(6)(B).	Election to treat as deductible for estate or gift tax purposes under sections 2056(b)(7)(C) or 2523(f)(6) of the Code, respectively, a survivor's annuity payable to a surviving spouse reported on an estate or gift tax return filed prior to November 11, 1988, as a nondeductible terminable interest.	Available to estates of decedents dying after December 31, 1981, or to transfers made after December 31, 1981, where: (1) the estate or gift tax return was filed prior to November 11, 1988; (2) the annuity was not deducted on the return as qualified terminable interest property under sections 2056(b)(7) or 2523(f) of the Code; and (3) the executor or donor elects to treat the interest as a deductible terminable interest under sections 2056(b)(7)(C) or 2523(f)(6) prior to November 11, 1990. [See paragraph (g) of this section.]
6180(b)(1)	142(i)(2)	Election by a nongovernmental owner of a highspeed intercity rail facility not to claim any deduction under section 167 or 168 of the Code and any credit under subtitle A, in order for the facility to be described in section 142(a)(11).	Available for bonds issued after November 10, 1988. [See paragraph (h) of this section.]
6181(c)(2)	148(f)(4)(A)	One-time election by the issuer of tax-exempt bonds outstanding as of November 11, 1988, other than private activity bonds, to apply the amendments made by section 148(b) of the Code to amounts deposited after such date in bona fide debt service funds.	Available for bonds outstanding as of November 11, 1988. The election must be made in writing on the later of March 21, 1990, or the first date any payment is required under section 148(f) of the Code. The election should be retained as part of the issuer's books and records (as defined in § 1.103-10(b)(2)(vi) of the regulations) of the bond issue to which it relates.

Section of act	Section of code	Description of election	Availability of election
6277	382, 383	Election by a loss corporation that otherwise qualifies for the exception of section 621(f)(5) of the 1986 Act not to apply that exception. That exception provides for the inapplicability, in certain situations, of the amendments to sections 382 and 383 of the Code made by the 1986 Act (relating to limitation of corporate attributes after an ownership change). That exception applies with respect to a loss corporation's ownership change resulting from a reorganization described in section 368(a)(1)(G) of the Code or from an exchange of debt for stock in a Title 11 or similar case if a petition was filed with the court before August 14, 1986.	Available for ownership changes described in section 621(f)(5) of the 1986 Act, if a petition was filed with the court before August 14, 1986. The election is to be made by filing a statement with the District Director with whom the loss corporation would file its Federal income tax return. The statement must identify the election as an election under section 6277 of the Act and must (1) contain the taxpayer's name, address, and employee identification number, (2) identify the transaction to which the election relates, (3) represent that the conditions for making the election have been satisfied, and (4) be signed by a person authorized to sign the Federal income tax return of the loss corporation.
8007(a)(1)	3127	Election to be exempted from the taxes imposed by sections 3101 and 3111 of the Code.	An individual employer and an employee, both of whom are members of a recognized religious sect or a division thereof described in section 1402(g)(1) of the Code and adherents of established tenets or teachings of such sect or division, may, if both qualify and make elections, obtain exemptions from the taxes imposed by sections 3101 and 3111. [See paragraph (l) of this section.]

(2) *Time for making elections*—(i) *In general.* Except as otherwise provided in this section, the elections described in paragraph (a)(1) of this section must be made by the later of—

(A) The due date (taking into account any extensions of time to file obtained by the taxpayer) of the tax return for the first taxable year for which the election is effective, or

(B) January 20, 1990 (in which case the election generally must be made by amended return).

(ii) *No extension of time for payment.* Payments of tax due must be made in accordance with chapter 62 of the Code.

(3) *Manner of making elections.* Except as otherwise provided in this section, the elections described in paragraph (a)(1) of this section must be made by attaching a statement to the tax return for the first taxable year for which the election is to be effective. If such tax return is filed prior to the making of the election, the statement must be attached to an amended tax return of the first taxable year for which the election is to be effective. Except as otherwise provided in the return or in the instructions accompanying the return for the taxable year, the statement must—

(i) Contain the name, address and taxpayer identification number of the electing taxpayer;

(ii) Identify the election;

(iii) Indicate the section of the Code (or, if the provision is not codified, the section of the Act) under which the election is made;

(iv) Specify, as applicable, the period for which the election is being made and the property or other items to which the election is to apply; and

(v) Provide any information required by the relevant statutory provisions and any information requested in applicable forms and instructions, such as the information necessary to show that the taxpayer is entitled to make the election.

Notwithstanding the foregoing, an amended return need not be filed for an election made prior to October 23, 1989, if the taxpayer made the election in a reasonable manner.

(4) *Revocation*—(i) *Irrevocable elections.* The elections described in this section that are made under the following sections of the Act are irrevocable: 1002(a)(11)(A) (Code section 168(b)(2)), 1002(a)(23)(B), 1002(l)(1)(A) (Code section 42(b)(2)(A)(ii)), 1002 (l)(2)(B) (Code section 42(f)(1)), 1005(c)(11), 1008(c)(4)(A) (Code section 460(b)(3)), 1014(c)(1), 1014(c)(2), 1014(d)(3)(B) and 1014(d)(4) (Code section 643(g)(2)), 2004(m)(5), 4004(a) (Code section 42(j)(5)(B)), 5033(a)(2) (Code section 2056A(d)), 6006(a) (Code section 1(i)(7)), 6026(a) (Code section 26A(h)), 6026(b)(1) (Code section 263A(d)(1)), 6152(a) and 6152(c)(3) (Code section 2056(b)(7)(C)(ii)), 6152(b) and 6152(c)(3) (Code section 2523(f)(6)(B)), 6152(c)(2) (Code sections 2056(b)(7)(C)(ii) and 2523(f)(6)(B)), and 6180(b)(1) (Code section 142(i)(2)).

(ii) *Elections revocable with the consent of the Commissioner.* The elections described in this section that are made under the following sections of the Act are revocable only with the consent of the Commissioner: 1006(d)(15), 1006(j)(1)(C), 1006(t)(18)(B), 1009(d) (Code section 165(l)), 1010(f)(1) (Code section 831(b)(2)(A)), 1010(f)(2) (Code section 835(a)), 1012(d)(4) (Code section 865(f)), 1012(d)(6) (Code section 865(g)(3)), 1012(d)(8) (Code section 865(h)(2)), 1012(l)(2) (Code section 245(a)(10)), 1012(n)(3), 1012(bb)(4) (Code section 904(g)(10)), 2004(j)(1), 6026(c) (Code section 263A(d)(3)(B)), and 6277.

(iii) *Freely revocable elections.* The election described in this section that is made under section 6011 of the Act is revocable without the consent of the Commissioner. (See section 121(c) of the Code and § 1.121–4 of the regulations.)

(b) *Elections with respect to the low-income housing credit.* The elections under sections 42(d)(3)(B), 42(f)(1), 42(g)(3)(B)(i), 42 (i)(2)(B), and 42(j)(5)(B) of the Code generally must be made for the taxable year in which the building is placed in service, or the succeeding taxable year if the section 42(f)(1) election is made to defer the start of the credit period, and must be made in the certification required to be filed pursuant to section 42(l) (1) and (2), as amended by the Act. The election under section 42(j)(5)(B) of the Code must be made by the later of the due date of the certification or January 20, 1990. The election under section 42(b)(2)(A)(ii) must be made in accordance with the requirements of Notice 89–1, 1989–2 I.R.B. 10.

(c) *Election to treat certain carryovers of disallowed investment interest expense as passive activity deductions.* The requirements of paragraphs (a) (2) and (3) of this section do not apply to an election under section 1005(c)(11) of the Act. Instead, the election must be made at the time and in the manner prescribed in Notice 89–36, 1989–13 I.R.B. 6. Thus, the election must be made before the filing deadline specified in Notice 89–36 by amending previously filed returns to reflect any change in the computation of tax liability that results from the election.

(d) *Election with respect to the treatment of reasonably estimated*

losses in an insolvent or bankrupt financial institution—(1) *In general.* This paragraph (d) applies to an election under section 905(a) of the 1986 Act, and to an election under section 1009(d) of the Act, both relating to section 165(l) of the Code. If—

(i) As of the close of the taxable year, it can reasonably be estimated that there is a loss on a deposit (within the meaning of section 165(l)(4)) of a qualified individual (as defined in section 165(l)(2)) in a qualified financial institution (as defined in section 165(l)(3)), and

(ii) Such loss is on account of the bankruptcy or insolvency of such institution, then the qualified individual may elect under either section 165(l)(1) or (5) (but not both), to treat the amount (subject to the applicable limitations if under section 165(l)(5)) so estimated for that taxable year as a loss described in either section 165(c)(3), relating to casualty losses, or section 165(c)(2), relating to transactions entered into for profit, and incurred during the taxable year.

The election will apply to all losses of the qualified individual on deposits in the institution with respect to which an election is made. For additional information and examples of the application of the election rules, see Notice 89–28, 1989–12 I.R.B. 72.

This paragraph (d) includes the procedural and the principal substantive rules first issued in Notice 89–28. For specific rules relating to an election under section 165(1)(5), see paragraph (d)(2) of this section.

(2) *Specific rules relating to the section 165(1)(5) election*—(i) *Applicability.* An election under section 165(1)(5) of the Code may be made only if no part of the taxpayer's deposits in the financial institution is federally insured. Generally, this requirement will be met only in cases in which none of the deposits in the financial institution are federally insured.

(ii) *Dollar limitations.* An election under section 165(1)(5) of the Code is limited to $20,000 ($10,000 in the case of a separate return by a married individual) in aggregate losses on deposits in any one financial institution. The applicable dollar limit must be reduced by the amount of any insurance proceeds that can reasonably be expected to be received under any state law.

(3) *Time and manner of determining loss and making the election*—(i) *Year of election and determination of loss.* A qualified individual may make an election under section 165(1) of the Code either for the first taxable year in which a reasonable estimate of the loss can be made or for a later taxable year that is prior to the taxable year in which the loss is sustained. The amount of the loss is determined by the difference between a taxpayer's basis in the deposits and the amount that is reasonably estimated to be recovered, taking into account all facts and circumstances reasonably available to the taxpayer as of the date the election is made. A reasonable estimate might be based, for example, on the percentage of total deposits likely to be recovered by the depositors according to a determination made by the regulatory authority or trustee having responsibility over the institution. In addition, the taxpayer's basis in the deposits must be reduced to the extent that a loss is claimed.

(ii) *Time and manner of making election.* A qualified individual may make an election under section 165(1) of the Code on—

(A) The income tax return for the taxable year with respect to which the taxpayer made a reasonable estimate of the loss;

(B) An amended income tax return for a taxable year described in paragraph (d)(3)(ii)(A) of this section, if the period prescribed for filing a claim for refund or credit for that taxable year has not yet expired; or, if applicable,

(C) An amended income tax return for a taxable year (beginning after December 31, 1981) described in paragraph (d)(3)(ii)(A) of this section, whether or not the claim for refund or credit is barred by another provision of law, but only if the amended return is properly filed on or before November 9, 1989.

(iii) *Information to include with election.* The election should include any information requested in the applicable forms and instructions (e.g., Form 4684, Casualties and Thefts). If the applicable form(s) and instructions do not make reference to or request information concerning this election, the taxpayer should, on an appropriate line or space clearly indicate the name of the financial institution, include the following language: "Insolvent Financial Institution Election," and include the calculation of the reasonably estimated loss claimed.

(4) *Revocability of the election*—(i) *In general.* If a taxpayer desires to revoke an election under section 165(l) of the Code, the taxpayer must request, in writing, the consent of the Secretary setting forth the pertinent facts surrounding the election and the reasons for requesting a revocation.

(ii) *Exception.* With respect to an election made under section 165(l)(1) of the Code prior to November 9, 1989, a qualified individual may revoke such election without securing the prior consent of the Secretary but only if the taxpayer makes an election under section 165(l)(5) by November 9, 1989, in the manner prescribed in paragraph (d)(3) of this section.

(5) *Effective date.* Paragraph (d) of this section is generally effective for elections made under section 165(1) of the Code on or after November 10, 1988. However, an election filed prior to February 24, 1989, that is made in any reasonable manner will be effective.

(e) *Election to treat a survivor annuity payable to a surviving spouse as a nondeductible terminable interest.* Where the time for making the election under section 2056(b)(7)(C)(ii) of the Code to treat the survivor annuity as nondeductible otherwise expires before November 11, 1990, the election may be made before November 11, 1990, by filing with the Service Center where the original return was filed supplemental information under § 20.6081–1(c) of the Estate Tax Regulations containing:

(1) A statement that the election under section 2056(b)(7)(C)(ii) of the Code is being made;

(2) The applicable revised schedules;

(3) A recomputation of the tax due; and

(4) Payment of any additional tax due.

(f) *Election to treat a joint and survivor annuity in which the donee spouse has a survivor interest as a nondeductible terminable interest.* Where the time for making the election under section 2523(f)(6)(B) of the Code to treat the interest as nondeductible otherwise expires before November 11, 1990, the election may be made before November 11, 1990, by filing with the appropriate Service Center an original return (or an amended return if an original return was filed) containing:

(1) A statement that the election under section 2523(f)(6)(B) is being made;

(2) A recomputation of the tax due; and

(3) Payment of any additional tax due.

(g) *Election to treat survivor's annuity payable to the surviving spouse as qualified terminable interest property deductible under sections 2056(b)(7)(C) or 2523(f)(6) of the Code in the case of a return filed prior to November 11, 1988.* (1) In the case of an estate tax election under section 2056(b)(7)(C) the election is made by filing with the Service Center where the estate tax return was filed supplemental information under § 20.6081–1(c) of the Estate Tax Regulations (and timely claim for refund under section 6511 of the Code, if applicable) containing:

(i) A statement that the election under section 6152(c)(2) of the Technical and Miscellaneous Revenue Act of 1988 is being made;

(ii) The applicable revised schedules; and

(iii) A recomputation of the estate's tax liability showing the amount of any refund due.

(2) In the case of a gift tax election under section 2523(f)(6) of the Code, the election is made by filing with the Service Center where the original return was filed an amended return (and timely claim for refund under section 6511, if applicable) containing:

(i) A statement that the election under section 6152(c)(2) of the Technical and Miscellaneous Revenue Act of 1988 is being made;

(ii) The applicable revised schedules; and

(iii) A recomputation of the gift tax liability showing the amount of any refund due.

(h) *Elections with respect to certain nongovernmentally owned rail facilities*—(1) *In general.* This paragraph applies to the election under section 6180(b)(1) of the Act (Code section 142(i)(2)) not to claim a deduction under section 167 or 168 of the Code or any credit with respect to certain bond-financed property. An electing owner that is not a governmental unit must make the election at the time the loan agreement with the issuer of the bond is executed. The election must be signed by the owner and include—

(i) A description of the property with respect to which the election is being made;

(ii) The name, address, and taxpayer identification number of the issuing authority;

(iii) The name, address, and taxpayer identification number of the electing owner; and

(iv) The date and face amount of the issue used to provide the property.

(2) *Other requirements.* The electing owner must provide a copy of the election to the issuing authority and to any person purchasing the facilities during the period the bonds are outstanding or within 6 years after the last bond that is part of the issue is retired. The electing owner, purchaser, and all successors in interest to the electing owner or purchaser must each retain the original election document or a copy thereof in its records until 6 years after the later of the date the last bond that is part of the issue is retired or the date such owner, purchaser or successor in interest ceases to own the facilities. The issuer must retain a copy of the election until 6 years after the date the last bond that is part of the issue is retired. In addition, while the facilities are nongovernmentally owned, any publicly recorded document with respect to the facilities must state that neither the electing owner, nor any person purchasing the facilities during the period the bonds are outstanding or within 6 years after the date the last bond that is part of the issue is retired, nor any successor in interest to the electing owner or such purchaser, may claim any deduction under section 167 or 168 of the Code or any credit with respect to the facilities.

(3) *Election is binding on purchasers and successors.* The election is binding at all times on any person purchasing the facilities during the period the bonds are outstanding or within 6 years after the date the last bond that is part of the issue is retired and on all successors in interest to the electing owner and such purchaser.

(i) *Election under section 3127 of the Code to be exempted from the taxes imposed by sections 3111 and 3101*—(1) *Application for exemption.* To be exempt from the taxes imposed under section 3111 and 3101 of the Code with regard to wages paid after December 31, 1988, an individual who is an employer and his or her employee must each file an application on the prescribed form with the Internal Revenue Service office designated in the instructions relating to the application for exemption.

(2) *Approval of application for exemption.* The application for exemption by the individual employer or the employee will be approved only if:

(i) The application contains or is accompanied by the evidence described in section 1402(g)(1)(A) of the Code and a waiver described in section 1402(g)(1)(B);

(ii) The Secretary of Health and Human Services makes the findings described in section 1402(g)(1) (C), (D), and (E) with respect to the religious sect or division described in section 1402(g)(1) of which the individual employer and employee are members; and

(iii) No benefit or other payment referred to in section 1402(g)(1)(B) became payable (or, but for sections 203 or 222(b) of the Social Security Act, would have become payable) to the employee filing the application at or before the time of the filing.

(3) *Effective period of exemption.* The election provided in paragraph (h)(1) of this section will apply with respect to wages paid by such individual employer during the period commencing with the first day of the first calendar quarter, after the quarter in which such application is filed, throughout which such individual employer or employee meets the applicable requirements specified in paragraphs (h)(2) and (h)(3).

(4) *Termination of election.* The exemption granted under section 3127 of the Code will end on the last day of the calendar quarter preceding the first calendar quarter thereafter in which:

(i) Such individual employer or the employee involved ceases to meet the applicable requirements of paragraphs (h)(2) and (h)(3), or

(ii) The sect or division thereof of which such individual employer or employee is a member is found by the Secretary of Health and Human Services to have failed to meet the requirements of section 3127(b)(2).

(5) *Both the individual employer and employee must qualify and elect.* The exemption from the taxes imposed under sections 3101 and 3111 of the Code is applicable only if both the individual employer and the employee qualify and make the election under the provisions of section 3127.

(j) *Certain elections not addressed in this section.* Elections under the Act that are not addressed in this section include:

(1) An election relating to the effective date of certain source rules under section 861(a) of the Code (section 1012(g)(1) of the Act);

(2) An election relating to transitional rules for interest allocation under 864(e) of the Code (section 1012(h)(7) of the Act);

(3) An election relating to the chain deficit rules under section 952(c)(1)(C) of the Code (section 1012(i)(25) of the Act);

(4) An election relating to the definition of a passive foreign investment company in section 1296 of the Code (section 1012(p)(27) of the Act);

(5) An election by a shareholder of a qualified electing fund under section 1291(d)(2)(B) of the Code (section 1012(p)(28) of the Act);

(6) An election to be treated as a qualified electing fund under section 1295 of the Code (section 6127 of the Act);

(7) An election relating to treatment of an insurance branch as a separate corporation under section 964(d) of the Code (section 6129 of the Act);

(8) An election relating to certain regulated futures contracts and nonequity options under section 988(c)(1)(D) of the Code (section 6130(b) of the Act);

(9) An election relating to certain qualified funds under section 988(c)(1)(E) of the Code (section 6130(b) of the Act);

(10) An election under section

952(c)(1)(B) of the Code to apply section 953(a) without regard to the same country exception (section 6131(a) of the Act);

(11) An election relating to treatment of a foreign insurance company as a domestic corporation under section 953(d) of the Code (section 6135 of the Act).

Guidance concerning the elections described in this paragraph (j) will generally be provided in regulations to be issued under the relevant Code sections. With respect to certain elections described in this paragraph (j), preliminary guidance has been published. See Notice 88–125, 1988–52 I.R.B. 4, for guidance with respect to the election described in paragraph (j)(6) of this section, relating to the qualified electing fund election. See Notice 88–124, 1988–51 I.R.B. 6, for guidance with respect to the elections described in paragraph (j) (8) and (9) of this section, relating to section 988(c)(1) (D) and (E) of the Code.

(k) *Additional information required.* Later regulations or revenue procedures issued under provisions of the Code or Act covered by this section may require the furnishing of information in addition to that which was furnished with the statement of election described in this section. In that event, the later regulations or revenue procedures will provide guidance with respect to the furnishing of additional information.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 5. The authority for Part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 6. Section 602.101 (c) is amended by inserting in the appropriate place in the table "5h.6...1545–1112."

There is need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impractical to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of Title 5 of the United States Code.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

Approved: August 29, 1989.

Kenneth W. Gideon,

Assistant Secretary of the Treasury.

[FR Doc. 89–22350 Filed 9–21–89; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Prohibited Acts and Disciplinary Severity Scale

CFR Correction

In the July 1, 1988, revision of Title 28 of the Code of Federal Regulations, on pp. 758-762, Table 3 of § 541.13 was published incorrectly.

§ 541.13 [Corrected]

All leaders in Table 3 should be removed.

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 370

Regulations Governing Payments by the Automated Clearing House Method on Account of United States Securities

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: By this final rule, the Bureau of the Public Debt provides regulatory procedures that will govern payments made on account of United States securities by the Automated Clearing House ("ACH") direct deposit method of payment. This rule is needed to consolidate in one part the procedures for effecting such payments for U.S. securities. Reference will be made to this part in the appropriate regulations governing the terms and conditions of individual securities.

EFFECTIVE DATE: This final rule is effective on October 1, 1989.

FOR FURTHER INFORMATION CONTACT: Margaret Marquette, Attorney-Advisor (202) 447–9859, or Sharon Separ, Attorney-Advisor (202) 447–9859.

SUPPLEMENTARY INFORMATION: Recognizing the need to improve the efficacy and efficiency of its payment system for United States securities, the Bureau of the Public Debt, Department of the Treasury, is expanding its use of the Automated Clearing House (ACH) method of payment. ACH payments have already proven a workable means of transmitting electronic payments in connection with some securities, including securities offered through the TREASURY DIRECT Book-Entry Securities System. The new ACH rule provides a comprehensive set of regulations for all ACH payments made in connection with any U.S. securities.

The rule defines the obligations and responsibilities of owners of securities, financial institutions, Federal Reserve Banks, and the Department of the Treasury. It also describes the prenotification procedure to be used in those cases where prenotification applies and describes the procedure that will be followed in cases where the Treasury or a Federal Reserve Bank has made a duplicate payment or a payment in error. Finally, it prescribes the liabilities of the Department of the Treasury and Federal Reserve Banks. Under the rule, all financial institutions that have agreed under title 31, Code of Federal Regulations, part 210, to receive Federal government recurring payments, such as for social security benefits, on a direct deposit basis will be deemed, upon designation by the investor, to be an authorized recipient for ACH payments under this part.

Existing and newly adopted regulations governing the issuance of securities will refer to the ACH regulations as appropriate. In the case of the TREASURY DIRECT Book-Entry Securities System, the ACH method of payment is set forth in 31 CFR 357.26. As § 357.26 contains provisions on direct deposit that duplicate those found in these regulations, portions of that section will be excised. Likewise, those payments in connection with U.S. securities that have previously been made under 31 CFR part 210 will now be made under these new regulations.

New regulations covering Series HH bonds issued on and after October 1, 1989, will provide for mandatory ACH payments of semi-annual interest and will refer to these regulations regarding electronic payments. Owners of Series H and Series HH bonds issued prior to October 1, 1989, may continue to receive interest payments by check, but are encouraged to receive them by direct deposit. Other regulations may, from time to time, be adopted or amended to provide for additional ACH payments.

The ACH payment system has been shown to be superior to the use of checks, in terms of risks, potential losses, and costs. It is especially suited for recurring payments, such as interest payments. Financial institutions benefit from direct deposit through reduced operating costs associated with processing recurring deposits. Recipients benefit by not having to worry about lost, stolen, or delayed interest checks and are assured that their money is on deposit and available for use on the payment date. Finally, the Government can reduce operational costs by

eliminating the need to print and mail millions of checks monthly; can provide a highly dependable, efficient payments system; and can effect a system for quickly tracing all payments.

Procedural Requirements

This rule is not considered a "major rule" for purposes of Executive Order 12291. A regulatory impact analysis, therefore, is not required.

Because this final rule relates to payment procedures for United States securities, the notice and public procedures requirements of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et sec.*) do not apply.

The collections of information contained in this regulation have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1535–0094. Comments concerning the collections of information and the accuracy of estimated average annual burden, and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project (1535–0094), Washington, DC 20503, with copies to the Bureau of the Public Debt, Forms Management Officer, Washington, DC 20239–1300.

The collections of information in this regulation are in §§ 370.2, 370.4, 370.5, 370.7, 370.8 and 370.12. This information is required by the Bureau of the Public Debt to enable an owner of a security to designate a financial institution to receive ACH payments and to identify the deposit account to which payments are to be credited; to enable a financial institution receiving ACH payments with respect to a security, to change a deposit account number and/or type or classification of deposit account; to enable the Department and a financial institution to exchange a prenotification message and response, respectively; to enable a financial institution to notify the Department when a designated account has been closed or if it is unable to credit the account for any reason, including the death or incapacity of any individual named on the account or the dissolution of an institution; and to enable a financial institution to respond to notice from the Department or a Federal Reserve Bank regarding an erroneous payment and any subsequent action taken to recover such payment.

Estimated total annual reporting burden: 21,257 hours.

The estimated annual burden per respondent varies from three to eight minutes, depending on individual circumstances, with an estimated average of five minutes.

Estimated number of respondents: 256,107.

Estimated annual frequency of responses: One.

List of Subjects in 31 CFR Part 370

Electronic funds transfer, Government securities, Securities.

Dated: September 19, 1989.

Gerald Murphy,

Fiscal Assistant Secretary.

Part 370 is added to subchapter B of title 31, Code of Federal Regulations, chapter II, to read as follows:

PART 370—REGULATIONS GOVERNING PAYMENTS BY THE AUTOMATED CLEARING HOUSE METHOD ON ACCOUNT OF UNITED STATES SECURITIES

Sec.

Authority: 31 U.S.C. chapter 31.

§ 370.0 Applicability.

The regulations in this part apply to the Automated Clearing House method of payment where employed by the Bureau of the Public Debt in connection with United States securities.

§ 370.1 Definitions.

In this part, unless the context indicates otherwise:

"*Automated Clearing House*" (ACH) means a payment mechanism through which participating institutions exchange funds electronically.

"*Deposit account*" means the account maintained at a financial institution specified by a recipient into which ACH payments under this part are to be deposited.

"*Financial institution*" means, for purposes of ACH payments, an institution which has agreed to receive credit payments under 31 CFR part 210, as amended from time to time, and has not withdrawn its participation in a direct deposit program under part 210, or an institution which is willing to agree to receive credit payments under 31 CFR part 210 and has enrolled with its Federal Reserve Bank.

"*Owner*" means the individual(s) or entity in whose name(s) a security is registered and who is authorized under the appropriate parts of this title to request that the security be transferred, reissued, reinvested, exchanged or paid.

"*Security*" means any obligation issued by the United States that, by the terms of the applicable offering circular, is made subject to this part.

§ 370.2 Designation of a financial institution to receive ACH payments.

(a) The owner of a security shall designate a financial institution to receive ACH payments and shall identify the deposit account to which the payments are to be credited, in accordance with the Treasury circular and regulations governing the terms and conditions of the security to which the payment relates.

(b) The designation of a financial institution by an owner to receive payments with respect to a security constitutes the appointment of that institution as the owner's agent for the receipt of such payments. The crediting of a payment to the institution for deposit to an account in accordance with the instructions of the owner discharges the United States of any further responsibility for such payment. Where the institution has arranged with the Federal Reserve Bank to have payments credited through a designee institution, the crediting of a payment to that designee institution discharges the United States of any further responsibility for the amount of such payment.

(Approved by the Office of Management and Budget under control number 1535–0094)

§ 370.3 Agreement of the financial institution.

Any financial institution which has agreed to accept credit payments under 31 CFR part 210, or hereafter agrees to do so, shall be deemed to accept payments under this part. In any case, a financial institution's acceptance and handling of a payment made with respect to a security covered by this part shall constitute its agreement to the provisions of this part. An institution may not be designated to receive

payments, as provided in this part, unless it has agreed, or hereafter agrees, to receive direct deposit payments under 31 CFR part 210.

§ 370.4 Change in deposit account by financial institution.

Upon the request of a financial institution receiving ACH payments with respect to a security, the Department will change a deposit account number and/or type or classification of such account without requiring the submission of a request from the owner of the security. The request must be made in accordance with implementing instructions issued by the Department. Such a request by a financial institution will be deemed an agreement by the institution to indemnify the Department and the owner for any loss resulting from the requested change.

(Approved by the Office of Management and Budget under control number 1535–0094)

§ 370.5 Prenotification.

(a) *General.* The Department may send a prenotification message to the financial institution designated to receive ACH payments to confirm the accuracy of the account information furnished by an owner, or other person or entity entitled to make the designation, and to advise the financial institution that such account has been so designated. Prenotification messages may be sent at any time, but not less than 15 days prior to the first ACH payment. A prenotification message may also be sent whenever there is a change in the payment instructions. The prenotification message shall contain the ABA routing/transit number of the financial institution to which payments with respect to a security are to be made, as well as a depositor name reference, deposit account number, and type or classification of account at the institution to which such payments are to be credited.

(b) *Response to prenotification.* The institution must respond to the prenotification message within eight calendar days after the date of receipt if the information as to the deposit account number and/or the type of account contained in the message does not agree with the records of the institution, or if the institution for any other reason has questions about the forthcoming payment, including its ability to credit the payment in accordance with this part. Upon receipt of a response to the prenotification message, the Department, as appropriate, will correct the payment instructions and send another prenotification message, or contact the owner for further instructions.

(c) *Effect of failure to reject.* If an institution does not reject or otherwise respond to a prenotification message within the specified time period, the institution shall be deemed to have accepted the prenotification and to have warranted to the Department that the information as to the deposit account number and/or the type of account contained in the message is accurate as of the time of such prenotification.

(Approved by the Office of Management and Budget under control number 1535–0094)

§ 370.6 Continuation of payment instructions.

Payment instructions for an account maintained by the Department will continue to apply to those securities until the Department:

(a) Receives a request from the owner to change such instructions; or

(b) Receives a request from a financial institution to change such instructions in accordance with § 370.4; or

(c) Receives advice from the financial institution holding the deposit account to which payment is being made that it has been closed; or

(d) Receives notice of a change in status of a designated account or of the owner, as provided in the regulations governing the terms and conditions of individual securities.

§ 370.7 Responsibility of financial institution.

An institution which receives a payment on behalf of its customer must:

(a) Upon receipt, credit the designated account and make the payment available for withdrawal or other use on the payment date. If a scheduled payment date is not a business day for the Federal Reserve Bank of the district in which the institution is located, payment will be made on the next-succeeding business day. If the institution is unable to credit the designated account, it shall return the payment by no later than the next business day after the date of receipt, with an electronic message or other response, explaining the reason for the return.

(b) Promptly notify the Department when the designated account has been closed, or when it is on notice of the death or legal incapacity (as determined under applicable State law) of any individual named on such account, or when it is on notice of the dissolution of a corporation in whose name the deposit account is held. In all such cases, the institution, following receipt of notice by its organizational component responsible for ACH transactions, shall return, with explanatory advice, all payments received for the designated account.

(Approved by the Office of Management and Budget under control number 1535–0094)

§ 370.8 Payments in error/duplicate payments.

If the Department or a Federal Reserve Bank has made a payment in error under this part, the Department or Federal Reserve Bank will make a corrected payment, as appropriate, to the person(s) or entity entitled thereto as established in accordance with the appropriate regulations governing the security involved. It will then promptly initiate action to recover the payment in error, and do so likewise on any duplicate payment that occurs, as follows:

(a) Send a written or electronic notice to the financial institution to which the payment was directed, which notice shall include the deposit account name reference, number, and the date and amount of the error in payment or duplicate payment that was not returned. See §§ 370.5(b) and 370.7(b) of this part. Upon receipt of this notice, the financial institution shall immediately return to the appropriate Federal Reserve Bank an amount equal to the payment in error or duplicate payment, where available. If the institution is unable to return payment for whatever reason, the institution shall immediately notify the Department or the Federal Reserve Bank, and provide such information as it has about the matter. The Department reserves the right to request the return of a partial amount of a payment in error or a duplicate payment.

(b) Where the payment in error or a duplicate payment has not been returned, the Department or Federal Reserve Bank shall undertake such other actions as may be appropriate under the circumstances. To the extent permitted by law, the collection action may include deducting the amount owing from future payments made to the deposit account to which the payment in error or duplicate payment was made.

(c) If a financial institution has failed to respond in any way to the notice made pursuant to § 370.8(a) of this part within 60 calendar days of that notice, it will be deemed, by virtue of its acceptance of the ACH payment hereunder, to have authorized the Federal Reserve Bank to debit the amount of the payment in error or duplicate payment from the account maintained or utilized by the financial institution at the Federal Reserve Bank to which the payment in error or

duplicate payment was credited. An institution designated by a financial institution to receive payment on its behalf, in authorizing such financial institution to utilize its account on the books of the Federal Reserve Bank, shall similarly be deemed to authorize such debit from that account. The institution to which payment has been directed and the owner of the security, who designated the deposit account to which the payment has been deposited, shall be deemed to have agreed to provide information and assistance to effect recovery of a payment in error or duplicate payment under this part. The owner is further deemed to agree to any action permitted by law to effect collection of a payment in error or a duplicate payment.

(Approved by the Office of Management and Budget under control number 1535–0094)

§ 370.9 Handling of payments by Federal Reserve Banks.

Each Federal Reserve Bank, as fiscal agent of the United States, shall receive payment in accordance with the information furnished by the owner as to the ABA routing/transit number of the financial institution to which ACH payments are to be made, as well as a depositor name reference, deposit account number, and type or classification of account at the institution to which such payments are to be credited, and shall make payment to the designated institution by crediting it to the account of the designated institution, or of its designee, in accordance with the Federal Reserve Bank's operating circular governing such payments.

§ 370.10 Timeliness of action.

If, because of circumstances beyond its control, the Department, a Federal Reserve Bank, or a financial institution is delayed beyond applicable time limits in taking any action with respect to a payment, the time for taking such action shall be extended as necessary until the cause of the delay ceases to operate.

370.11 Substitute payment procedures.

The Department of the Treasury is authorized to employ substitute or alternate payment procedures, instead of ACH, in any case, or class of cases, where operational exigencies necessitate such action. Any such action shall be final.

§ 370.12 Other payments.

The provisions of this regulation shall apply to any other payments related to Government securities, such as issuing and paying agent fees, made by the ACH method. The individual or entity entitled to payment shall furnish the same type of information as is required in these regulations from a security owner.

(Approved by the Office of Management and Budget under control number 1535–0094)

§ 370.13 Waiver of regulations.

The Secretary reserves the right, in the Secretary's discretion, to waive any provision(s) of these regulations in any case or class of cases for the convenience of the United States or in order to relieve any person(s) of unnecessary hardship, if such action is not inconsistent with law, does not impair any existing rights, and the Secretary is satisfied that such action will not subject the United States to any substantial expense or liability.

§ 370.14 Liability of Department and Federal Reserve Banks.

(a) The Department and the Federal Reserve Banks may rely on the information provided by the owner, or other person or entity entitled to make the designation, concerning the financial institution or deposit account to which payment is to be made, and are not required to verify this information. The Department and the Federal Reserve Banks shall not be liable for any action taken in accordance with the information so furnished.

(b) In the event that the United States or the Department is unable to make a payment when due, the liability of the United States and the Department is limited to the amount of the payment.

§ 370.15 Supplements, amendments or revisions.

The Secretary may, at any time, prescribe additional supplemental, amendatory or revised regulations with respect to payments made by ACH.

[FR Doc. 89–22408 Filed 9–21–89; 8:45 am]
BILLING CODE 4810–35–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD1 89–100]

Special Local Regulations; Classic Connecticut Cup Ultimate Yacht Race

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing special local regulations for several hour periods each day between September 20, 1989 and September 24, 1989 for the Classic Connecticut Cup Ultimate Yacht Race. The event will be held on the waters of Long Island Sound south of New London, CT. The Ultimate Yacht Race is part of a professional yacht racing circuit; competitors will be racing in boats ranging from 14 to 30 feet. These regulations are needed to provide for the safety of life on the navigable waters of the United States.

DATES: These regulations will become effective from 9:00 a.m. to 3:00 p.m. on September 20th, 1989, from 2:30 p.m. to 4:30 p.m. on September 21st, 1989, from 12:00 p.m. to 5:00 p.m. on September 22nd, 1989, and from 10:00 a.m. to 5:00 p.m. on September 23rd, 1989 and September 24th, 1989.

FOR FURTHER INFORMATION CONTACT: Ensign L.J. Penney, (617) 223–8310.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Negotiations between the Coast Guard and the sponsor created a delay and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date. The regulations will be published in the First Coast Guard District Local Notice to Mariners.

Drafting Information

The drafters of these regulations are ENS L.J. PENNEY, project officer, First Coast Guard District Boating Safety Affairs Branch, and LT J.B. GATELY, project attorney, First Coast Guard District Legal Division.

Discussion of Regulations

The Classic Connecticut Cup Ultimate Yacht Race is part of a series of professional sailboat races. Racing will be held in three different classes of yachts; J–14's (14 foot monohulls), Lasers (20 foot monohulls), and Ultimate 30's (30 foot monohulls). The races will be held on the Long Island coastal waters south of New London roughly bounded to the east by the Dumping Grounds and to the west by Bartlett Reef. No vessel other than participants or those vessels authorized by either the sponsor or the Coast Guard patrol commander shall enter the regulated area. The course will be marked by inflatable drop buoys. The spectator area will be to the south of the regulated area and sponsor provided vessels will form a spectator barrier to prevent vessels from entering the race course. Buoys marking both the course and the edge of the spectator area will

be put in place each day one hour prior to the effective time of regulation and will be removed at the conclusion of the day's racing. The regulated area will be patrolled by the Coast Guard, Coast Guard Auxiliary, sponsor-provided patrols and state and local law enforcement officials.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (Water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. A temporary § 100.35–01–88 is added to read as follows:

§ 100.35–01–88 Classic Connecticut Cup Ultimate Yacht Race.

(a) Regulated Area. The regulated area, located in the Long Island Sound waters south of New London, Connecticut is between the Thames River entrance and Goshen Point within a roughly rectangular area described by the following points:

Commencing at New London Harbor Light then due east to
Latitude 41–18–59N
Longitude 72–05–00W then due South to
SE Latitude 41–16–00N
Longitude 72–05–00W then due West to
SW Latitude 41–16–00N
Longitude 72–08–00W then 025 degrees true to
Latitude 41–17–57N
Longitude 72–06–45W (Goshen Point)

(b) Special Local Regulations. The following requirements will be placed on vessels operating within the regulated area during the effective period of regulation:

(1) The sponsor shall be responsible for proper marking of the course within the regulated area and adequately marking the boundaries of the spectator area. The buoys marking the course and spectator area shall be in position no later than one hour prior to the start of each race and the buoys shall be removed no later than one hour after the completion of the race. The sponsor shall report to the Coast Guard patrol commander both when the marks are in place and again when they are removed. The Patrol Commander shall be responsible for verifying that all turn buoys and spectator marks are in position prior to allowing that day's event to begin.

(2) No person or vessel may transit through, or remain in, the regulated area during the effective period of regulation unless participating in the event or as authorized by the sponsor or Coast Guard patrol personnel.

(3) The spectator area shall be on a line drawn from the southeast corner of the regulated area to the southwest corner of the regulated area then along the westerly boundary line to Goshen Point. Sponsor provided patrol boats shall set up a spectator barrier along the southern edge of the regulated area. The patrol boats shall display a distinct and visible banner that identifies them as the edge of the spectator area. All spectating vessels shall observe the racing from the spectator area.

(4) The sponsor shall be required to provide no less than (6) six vessels for spectator control and securing the race area. It will be just cause to terminate the event if these vessels are not provided. These vessels shall be on scene no later than one hour prior to the start of the day's event.

(5) The sponsor shall establish a readily identifiable color coding system to differentiate between the sponsor patrol vessels, spectator area patrol vessels and VIP/Race officials. This system will allow the patrol commander to identify the purpose of each vessel operating in or near the regulated area.

(6) The New London Main Channel is regularly transited by commercial ferries operating between Orient Point and New London. These ferries usually depart the marked channel prior to its termination and "short cut" through the regulated area. On the effective dates the ferries shall transit southward to Dumping Ground buoy "DGC" prior to turning on a southwesterly course.

(7) At the discretion of the Patrol Commander, any violation of the provisions contained within this regulation shall be sufficient grounds to terminate this event.

(c) Effective Dates. These regulations will be effective from 9:00 a.m. to 3:00 p.m. on September 20th, 1989, from 2:30 p.m. to 4:30 p.m. on September 21st, 1989, from 12:00 p.m. to 5:00 p.m. on September 22nd, 1989, and from 10:00 a.m. to 5:00 p.m. on September 23rd, 1989 and September 24th, 1989. Public notification will be achieved through the Coast Guard Local Notice to Mariners.

Dated: September 11, 1989.

R.O. Buttrick,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 89–22433 Filed 9–21–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD5–89—009]

Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, Albemarle and Chesapeake Canal, Chesapeake, VA

AGENCY: Coast Guard, DOT.

ACTION: Amendment to temporary rule.

SUMMARY: The Coast Guard is amending the temporary regulations governing the operation of the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia, to change the limited bridge openings 24-hours a day, seven days a week, from once every 2 hours on the even hour, to once every 2 hours on the even half-hour, with three additional openings—one in the morning and two in the afternoon. This change will improve the flow of vessel traffic and provide for the reasonable needs of navigation.

DATES: This amendment to the temporary rule is effective from September 18, 1989, until December 31, 1989, unless amended or terminated before that date.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION: On July 25, 1989, the Coast Guard published a temporary regulation with request for comments in the **Federal Register** (54 FR 30890) to permit the City of Chesapeake, owner of the bridge, to limit draw openings 24-hours a day, seven days a week in order to prevent any further damage to the superstructure. The comment period for the temporary regulation ended August 21, 1989. This amendment is being issued in light of comments received from interested waterway users. Persons interested in commenting on this amendment are encouraged to do so by following the procedures set out in the July 25, 1989, **Federal Register** publication (54 FR 30890).

Drafting Information

The drafters of this notice are Linda L. Gilliam, project officer and Captain M. K. Cain, project attorney.

Discussion of Comments

As a result of the comments received in response to the temporary rule published in the **Federal Register** (54 FR

30890) on July 25, 1989, the Coast Guard is issuing an amendment to change the times when the Centerville Turnpike drawbridge across the Albemarle and Chesapeake Canal, mile 15.2, in Chesapeake, Virginia, will open for passage of vessel traffic. The current temporary rule restricts bridge openings to once every two hours on the even hour, seven days a week, 24-hours a day until December 31, 1989. Five comments were received. Two were from private citizens opposing the temporary rule. Both suggested leaving the bridge opened for an hour to allow vessel traffic to pass through and closed during the following hour to allow for the passage of vehicle traffic. This is not considered feasible since such action would cause the bridge to be more disruptive to both highway and vessel traffic than under the current schedule. The other three comments were from Coinjock Marina, Augusta Towing, Inc., and S. C. Loveland. S. C. Loveland suggested that commercial operators should be allowed to transit the bridge on demand and recreational vessels should be allowed openings every two hours, on the even hour. Augusta Towing suggested a similar schedule, but commented that an alternative would be to put commercial traffic on a schedule that will cause little or no delay between this and the other scheduled bridges on the Canal. We feel this amendment accomplishes that. Coinjock Marina suggested that openings be changed from every two hours on the even hour to every two hours on the even half-hour, with additional openings at 7:30 a.m., 3:30 p.m. and 5:30 p.m. All of the comments have been considered, and it is felt that changing the schedule to reflect openings on the even half hour with the addition of three extra openings would allow a smoother flow of vessel traffic along the Albemarle and Chesapeake Canal and greatly reduce delays for vessels transiting other scheduled bridges on the Canal.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this amendment does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

This amendment to the temporary rule is not considered major under Executive Order 12291 on Federal Regulation nor significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This conclusion is based on the fact that these regulations are not expected to have any significant effect on commercial navigation or on any businesses that depend on waterborne transportation for successful operations. Since the economic impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.996 is revised to read as follows:

117.996 Albemarle and Chesapeake Canal.

The draw of the S.R. 170 bridge, mile 15.2, at Chesapeake, shall open on the even half-hour, once every two hours, 24 hours a day, with additional openings at 7:30 a.m., 3:30 p.m., and 5:30 p.m., for vessels waiting to pass.

3. This rule is effective from September 18, 1989, to December 31, 1989, unless amended or terminated before that date.

Dated: September 13, 1989.

P. A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 89–22435 Filed 9–21–89; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD5–88–025]

Drawbridge Operation Regulations: Roanoke Sound, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule; correction.

SUMMARY: The U.S. Coast Guard is correcting an error in an amendment to the regulations governing the operation of the US 64/264 drawbridge across the Roanoke Sound, mile 2.8, in Manteo, North Carolina, which appeared in the **Federal Register** on Monday, January 30, 1989 (54 FR 04279).

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6222.

SUPPLEMENTARY INFORMATION: The Coast Guard published regulations governing the operation of the US 64/264 drawbridge across the Roanoke Sound, mile 2.8, in Manteo, North Carolina, in the **Federal Register** on Monday, January 30, 1989 (54 FR 04279). In preparing the final regulations, an error was made with regard to the substitution of the word revised for the word added in promulgating § 117.838 of the drawbridge operation regulations. As this is a technical amendment that does not change the substance of § 117.838, publication of this change for comment is not required by 5 U.S.C. 553.

Correction

The following correction is made to Drawbridge Operation Regulations; Roanoke Sound, NC (33 CFR part 117) published in the **Federal Register** on January 30, 1989 (54 FR 04279).

§ 117.838 [Corrected]

1. Paragraph 2 is corrected to read as follows: "2. Section 117.838 is added to read as follows:"

Dated: September 11, 1989.

P.A. Welling,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89–22434 Filed 9–21–89; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-3649-7]

North Carolina; Final Authorization of State Harzardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: North Carolina applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has reviewed North Carolina's application and has made a decision, subject to public review and comment, that North Carolina's hazardous waste program revisions satisfy all of the requirements necessary to qualify for authorization. Thus, EPA intends to approve North Carolina's hazardous waste program revisions. North Carolina's application for program revisions is available for public review and comment.

DATES: Authorization for North Carolina shall be effective November 21, 1989, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on North Carolina's program revision application must be received by the close of business, October 23, 1989.

ADDRESSES: Copies of North Carolina's program revision application are available during 9:00 a.m.–5 p.m. at the following addresses for inspection and copying: North Carolina Department of Human Resources, P.O. Box 2091, Raleigh, North Carolina 27602; U.S. EPA Headquarters Library, PM 211M, 401 M Street, SW., Washington, DC 20460, Phone: 202/382–5926, U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone 404/347–4216, Contact: Gail Alston. Written comments should be sent to Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone 404/347–3016.

FOR FURTHER INFORMATION CONTACT: Mr. Otis Johnson, Jr., Chief, Waste Planning Section, RCRA Branch, Waste Management Division, 345 Courtland Street, NE., Atlanta, Georgia 30365, Phone 404/347–3016.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266 and 124 and 270.

B. North Carolina

North Carolina received Final authorization for its pre-HSWA program on December 31, 1984. North Carolina received authorization for revisions to its program March 25, 1986, for the Redefinition of Solid Waste Provisions promulgated on January 4, 1985. North Carolina received authorization for revisions to its program on October 4, 1988, for provisions promulgated between July 1, 1985–June 30, 1986 (53 FR 29460), and on April 10, 1989, for provisions promulgated between January 2, 1983, and April 23, 1985 (54 FR 6290). Today North Carolina is seeking approval of its program revisions for the following authorities promulgated between July 1, 1986–June 1987.

Federal requirement			State authority
● Radioactive Mixed Waste	51 FR 24504	7/3/86	10 NCGS 130A 294(j).
● Liability Coverage—Corporate Guarantee	51 FR 25350	7/11/86	10 NCGS 10F.0032(i)(h), NCGS 130A 294(c)(i)(15).
● Hazardous Waste Tank Systems	51 FR 25422	7/14/86	10 NCGS 10F.0002(a), 10 NCAC 10F.0029(a), 10 NCAC 10F.0030(c), 10 NCAC 10F.0032 (c), (f), (h), (k), 10 NCAC 10F.0033 (b), (e), (g), (h), (i), 10 NAC 10F.0034(b)(5), 10 NCAC 10F.0034(b)(7), 10 NCAC 10F.0034(g)(3).
● Correction to Listing of Commercial Chemical Products and Appendix VIII Constituents (Superceded by 53 FR 13382).	51 FR 28296	8/6/86	10 NCGS 130A 294(c)(i) and (1)(a), 10 NCAC 10F.0029(e).
● [Hazardous Waste Systems; Correction]	51 FR 29430	8/15/86	10 NCGS 130A 294(c)(i) and (1)(a), 10 NCAC 10F.0029(e).
● [Listing of Spent Pickle Liquor; Correction]	51 FR 33612	9/22/86	10 NCGS 130A 294(c) (i) and (1)(a), 10 NCAC 10F.0029(e).
● Revised Manual SW-846; Amended Incorporation by Reference.	52 FR 8072	3/16/87	NCGS 13A 294(c) (1)–(15), 10 NCAC 10F.0034(a)(6), 10 NCAC 10F.001(e).
● Closure/Post Closure Care for Interim Status Surface Impoundments.	52 FR 8704	3/19/87	NCGS 130A 294(c) (1)–(15), 10 NCAC 10F.0033(k).
● Definition of Solid Waste; Technical Corrections.	52 FR 21306	6/5/87	NCGS 130A 294(c) (1)–(15), 10 NCAC 10F.029(e).
● Amendents to Part B—Information Requirements for Land Disposal Facilities.	52 FR 23447	6/2/87	NCGS 130A 294(c), 10 NCAC 10F.0034(b)(5).

EPA has reviewed North Carolina's application, and has made an immediate final decision that North Carolina's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to North Carolina. The public may submit written comments on EPA's immediate final decision up until October 23, 1989. Copies of North Carolina's application for program revisions are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of North Carolina's program revisions shall become effective in 60 days unless an adverse comment pertaining to the State's revisions

discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

North Carolina is not seeking authorization to operate in Indian lands.

C. Decision

I conclude that North Carolina's application for program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, North Carolina is granted final authorization to operate its hazardous waste program as revised.

North Carolina now has responsibility for permitting treatment, storage and disposal facilities within its borders and carrying out other aspects of the RCRA-program, subject to the limitations of its revised program application and previously approved authorities. North Carolina also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

Compliance With Executive Order 12291

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of North Carolina's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of secs. 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 14, 1989.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 89-22417 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[FRL-3631-4]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Cecil Lindsey Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region 6 announces the deletion of the Cecil Lindsey Superfund site in Newport, Arkansas, from the National Priorities List (NPL). The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) of 1986. EPA and the State of Arkansas have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup is appropriate. Furthermore, EPA and the State of Arkansas have determined that the remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Martin Swanson, Site Project Manager (6H-SA), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, (214) 655-6710.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is the Cecil Lindsey site, located in Newport, Arkansas. A Notice of Intent to Delete for this site was published on March 28, 1989 (**Federal Register**, Vol. 54, No. 58, pages 12659-12661). The closing date for comments on the Notice of Intent to Delete was May 3, 1989. EPA received no comments.

The NPL is a list of hazardous waste sites which EPA has identified as presenting a known or potential threat to human health and the environment. Sites on the NPL are eligible for remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to § 300.66(c)(8) of the NCP, any site deleted from the NPL is eligible for further Fund-financed remedial actions, should future conditions warrant such actions.

Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Hazardous waste.

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: Sec. 105, Pub. L. 96-510, 94 Stat. 2764, 42 U.S.C. 9605 and sec. 311(c)(2), Pub. L. 92-500 as amended, 86 Stat. 865, 33 U.S.C. 1321(c)(2); E.O. 12316, 46 FR 42237; E.O. 11735, 38 FR 21243.

Appendix B [Amended]

2. The NPL part 300, appendix B, group 3 is amended as follows:

Remove the following entry and move up the other entries accordingly:

Cecil Lindsey Site, Newport, Arkansas.

The NPL will reflect this deletion in the next final update.

Dated: July 19, 1989.

Robert E. Layton Jr.,

Regional Administrator.

[FR Doc. 89-22070 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

Practice and Procedure; Cross-Reference Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment is being made to correct an error that has been identified by the Agency in the Code of Federal Regulations.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Robert DeYoung, Private Radio Bureau, Washington, DC 20554, (202) 632-7175.

SUPPLEMENTARY INFORMATION: This action corrects an erroneous cross-reference in § 1.958(a)(4) of the rules. The cross-reference should be to § 1.913 of the rules rather than to § 1.914 as is presently the case.

List of Subjects in 47 CFR Part 1

Private radio services, Applications, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Part 1 of title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement 5 U.S.C. 552 unless otherwise noted.

2. Section 1.958 is amended by revising paragraph (a)(4) to read as follows:

§ 1.958 Defective applications.

(a) * * *

(4) The application form is not signed in accordance with § 1.913 of these rules.

* * * * *

[FR Doc. 89-22406 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 89-71; RM-6509]

Radio Broadcasting Services; East Porterville, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 263B1 for Channel 263A at East Porterville, California, and modifies the Class A permit of Central California Broadcasting, as requested, to specify operation on the higher powered channel, thereby providing that community with its first wide coverage area FM service. See 54 FR 13534, April 4, 1989. Coordinates used for Channel 263B1 at East Porterville are 35-53-00 and 118-56-00. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-71, adopted August 28, 1989, and released September 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for California, is amended for East Porterville, by removing Channel 263A and adding Channel 263B1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22353 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-451, RM-6352]

Radio Broadcasting Services; Ludlow, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Ludlow, California, as that community's first local broadcast service, in response to a petition filed by Rick L. Murphy. Coordinates used for Channel 289A are 34-43-24 and 116-09-54. With this action, the proceeding is terminated.

DATES: Effective November 3, 1989. The window period for filing applications at Ludlow, California, Channel 289A, will open on November 6, 1989, and released December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634-6530. Questions related to the window application filing process at Ludlow, California, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 88-451, adopted August 28, 1989 and released September 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under California by adding Ludlow, Channel 289A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22354 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-464; RM-6331]

Radio Broadcasting Services; Wray, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 252C2 for Channel 252A at Wray, Colorado, and modifies the Class A license of Wray Radio, Inc. for Station KATR-FM, as requested, to specify operation on the higher powered channel. See 53 FR 39615, October 11, 1988. Coordinates used for Channel 252C2 at Wray are 40-04-56 and 102-11-25. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 3, 1989.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-464, adopted August 28, 1989, and released September 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments for Colorado, is amended for Wray, by removing Channel 252A and adding Channel 252C2.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22355 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-487; RM-5133]

Radio Broadcasting Services; Fernandina Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287A to Fernandina Beach Florida. This document also dismisses a "Motion to Consolidate Proceedings" filed by General Broadcasting of Florida, Inc., licensee of Station WCAT-FM, Channel 294C1, Leesburg, Florida. The reference coordinates for the Channel 287A allotment at Fernandina Beach, Florida are 30-40-06 and 81-27-12. With this action, this proceeding is terminated.

DATES: Effective October 30, 1989. The window period for filing applications for the Channel 287A allotment at Fernandina Beach, Florida, will be open on October 31, 1989, and close on November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MM Docket No. 86-487, adopted September 5, 1989, and released September 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Florida by adding Channel 287A at Fernandina Beach.

Federal Communications Commission.

Bradley P. Holmes,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22356 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-460; RM-6263; RM-6214; RM-6338; RM-6601]

Radio Broadcasting Services; Bartow, Chauncey, Dublin, Eastman, Jeffersonville, Lyons, Soperton and Unadilla, GA

AGENCY: Federal Communication Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kirby Broadcasting Company, substitutes Channel 224C2 for Channel 224A at Dublin, Georgia, modifies its license for Station WKKZ(FM) accordingly, substitutes Channel 248A for Channel 221A at Eastman, Georgia, modifies the license of Station WUFF accordingly, substitutes Channel 229A for unoccupied but applied for Channel 248A at Jeffersonville, Georgia, and substitutes Channel 265A for Channel 233A at Lyons, Georgia, with the modification of Station WLYU's construction permit accordingly. At the request of Lonnie C. Carter, the Commission allots Channel 267C2 to Chauncey, Georgia, as the community's first local service. This action also denies the request of Sol Broadcasting, Inc. to substitute Channel 267C2 for Channel 269A at Soperton, Georgia, and to modify its license for Station WKTM(FM) accordingly. This action also dismisses the request of J. Morgan Dowdy and Richard W. Rhodes to allot Channel 267A to Bartow and Unadilla, Georgia. With this action, this proceeding is terminated.

DATES: Effective November 3, 1989. The window period for filing applications for Channel 267C2 at Chauncey, Georgia, will open on November 6, 1989, and close on December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-460, adopted August 28, 1989, and released September 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Channel 267C2 can be allotted to Chauncey with a site restriction of 18.4 kilometers north. The coordinates for the Chauncey allotment are North Latitude 32-16-03 and West Longitude 83-06-26. Channel 224C2 can be allotted to Dublin and can be used at Station WKKZ(FM)'s present transmitter site. The coordinates for the Dublin allotment are North Latitude 32-31-21 and West Longitude 82-54-00. Channel 248A can be allotted to Eastman and can be used at Station WUFF(FM)'s present transmitter site. The coordinates for the Eastman allotment are North Latitude 32-13-35 and West Longitude 83-13-10. Channel 265A can be allotted to Lyons and used at Station WLYU's present transmitter site. The coordinates for the Lyons allotment are North Latitude 32-06-48 and West Longitude 82-23-52. Channel 229A can be allotted to Jeffersonville with a site restriction of 5.8 kilometers (3.6 miles) southwest. The coordinates for the Jeffersonville allotment are North Latitude 32-39-28 and West Longitude 83-22-55.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by adding the following entry: Chauncey, Georgia, Channel 267C2. The FM Table of Allotments is also amended for Dublin, Georgia, by removing Channel 224A and adding Channel 224C2; amending the entry for Eastman, Georgia, by removing Channel 221A and adding Channel 248A; amending the entry for Jeffersonville, Georgia, by removing

Channel 248A and adding Channel 229A; amending the entry for Lyons, Georgia, by removing Channel 223A and adding Channel 265A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22357 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-69, RM-6303]

Radio Broadcasting Services; Tell City, IN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 245A to Tell City, Indiana, as that community's first local broadcast service, in response to a petition filed by Michael H. Hagedorn, and supported by Tell City Radio Company. Coordinates used for Channel 245A at Tell City are 38-00-10 and 86-43-00. With this action, the proceeding is terminated.

DATES: Effective November 3, 1989; The window period for filing applications at Tell City, Indiana, Channel 269A, will open on November 6, 1989 and released December 6, 1989.

FOR FURTHER INFORMATION CONTACT: Ordee Pearson, (202) 634-6530. Questions related to the window application filing process at Tell City, Indiana, should be addressed to the Audio Service Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order in MM Docket No. 89-69, adopted August 28, 1989, and released September 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of Allotments, is amended under Indiana by adding Tell City, Channel 245A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22358 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-90; RM-6674 and RM-6790]

Radio Broadcasting Services; Kosciusko, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 277C3 to Kosciusko, Mississippi, in response to a counterproposal filed by G. Michael Comfort. The coordinates for Channel 277C3, at a site restriction 15.5 kilometers (9.7 miles) southwest of the community, are 32-58-38 and 89-73-20. The notice in this proceeding was issued in response to a petition filed by G. Michael Comfort. Petitioner filed the counterproposal once the Commission established the new C3 class of FM station, indicating a C3 channel could provide better service to Kosciusko and the surrounding area. With this action, this proceeding is terminated.

DATES: Effective October 30, 1989. The window for Channel 277C3 at Kosciusko for filing applications will open on October 31, 1989, and close on November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 89-90, adopted August 21, 1989, and released September 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Mississippi, by adding Channel 277C3 at Kosciusko.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22359 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-587; RM-6471; RM-6689]

Radio Broadcasting Services; Comanche and Snyder, OK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Harold E. Cochran, substitutes Channel 245C2 for Channel 245A at Comanche, Oklahoma, and modifies its license for Station KDDQ to specify operation on the higher powered channel. Channel 245C2 can be allotted to Comanche in compliance with the Commission's minimum distance separation requirements and can be used at Station KDDQ's present transmitter site. The coordinates for this allotment are North Latitude 34-26-12 and West Longitude 97-54-47. The Commission, at the request of Leland Lafferty, allots Channel 262A to Snyder, Oklahoma, as its first local FM service. Channel 262A can be allotted to Snyder in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.1 kilometers (0.7 miles) west to avoid a short-spacing to Station KATT-FM, Oklahoma City, Oklahoma. The coordinates for this allotment are North Latitude 34-39-36 and West Longitude 98-57-11. With this action, this proceeding is terminated.

DATES: Effective October 30, 1989. The window period for filing applications for Channel 262A at Snyder, Oklahoma, will open on October 31, 1989, and close on November 30, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-587, adopted August 22, 1989, and released September 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended for Comanche, Oklahoma, by removing Channel 245A and adding Channel 245C2. Section 73.202(b), the FM Table of Allotments, is amended by adding Snyder, Oklahoma, Channel 262A.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22360 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1000, 1157, 1180, 1248, 1280 and 1312

Technical Amendments

AGENCY: Interstate Commerce Commission.

ACTION: Technical amendments.

SUMMARY: In order to update the Interstate Commerce Commission's regulations, as set forth in title 49, chapter X of the Code of Federal Regulations, several technical amendments are necessary. These amendments are set forth below. Also, a revision is necessary in 49 CFR part 1157. This revision was inadvertently omitted from our rulemaking proceeding in Ex Parte No. 246 (Sub-No. 5), Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services—1987 Update, published on December 8, 1987 at 52 FR 46481. This revision is also set forth below.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen King, (202) 275-7429 or Kathleen Gass, (202) 275-6796.

SUPPLEMENTARY INFORMATION:

List of Subjects

49 CFR Part 1000

Administrative practice and procedure; Conflict of interest; Seals and insignia.

49 CFR Part 1157

Railroads; Reporting and recordkeeping requirements; Uniform system of accounts.

49 CFR Part 1180

Administrative practice and procedure; Archives and records; Maritime carriers; Railroads.

49 CFR Part 1248

Freight; Railroads; Reporting and recordkeeping requirements; Statistics.

49 CFR Part 1280

Classified information.

49 CFR Part 1312

Freight forwarders; Maritime carriers, Motor carriers, Pipelines, Railroads, Tariffs.

For the reasons set forth in the preamble, title 49, chapter X, parts 1000, 1157, 1180, 1248, 1280 and 1312 are amended as follows:

PART 1000—THE COMMISSION

1. The authority citations at the section levels of subpart A are removed and a new authority citation for subpart A is added to read as follows:

Authority: 49 U.S.C. 10303, 10321, 11144 and 11145.

PART 1157—STANDARDS FOR DETERMINING COMMUTER RAIL SERVICE CONTINUATION SUBSIDIES

2. The authority citation for part 1157 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10362; 5 U.S.C. 559, unless othewise noted.

§1157.7 [Amended]

3. Section 1157.7(f)(2)(iv) is corrected by placing the designation (iv) in front of "Other Equipment-" and removing it from behind this phrase.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

4. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 10903-10906, 11341, 11343-11346; 5 U.S.C. 553 and 559; 45 U.S.C. 904 and 915.

5. Section 1180.25(b)(1) is revised to read as follows:

§ 1180.25 Procedures.

* * * * *

(b) *Application.* (1) The filing fee to file an application with the Commission under these procedures is set forth in 49 CFR 1002.2(f) (46) through (49).

* * * * *

PART 1248—FREIGHT COMMODITY STATISTICS

6. The authority citations at the section levels of subpart A are removed and a new authority citation for subpart A is added to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 11144 and 11145.

PART 1280—HANDLING OF NATIONAL SECURITY INFORMATION AND CLASSIFIED MATERIAL

7. The authority citation for part 1280 continues to read as follows:

Authority: E.O. 12356.

§1280.5 [Amended]

8. In § 1280.5(d), the internal reference to ICC's Cannons of Conduct "CFR 1000.735-30" is revised to read "49 CFR 1000.735-31".

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

9. The authority citation for part 1312 continues to read as follows:

Authority: 49 U.S.C. 10321 and 10762; 5 U.S.C. 553.

§ 1312.13 [Amended]

10. In § 1312.13(h), the existing paragraph designated as (1) is changed to introductory text and existing paragraphs (i) through (v) are designated as (1) through (5).

Noreta R. McGee,

Secretary.

[FR Doc. 89-22425 Filed 9-21-89; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 54, No. 183
Friday, September 22, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1036

[DA-89-036]

Milk in the Eastern Ohio-Western Pennsylvania Marketing Area; Notice of Proposed Temporary Revision of Supply Plant Shipping Percentages and Cooperative Association Delivery Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed temporary revision of rule.

SUMMARY: This notice invites written comments on a proposal to increase temporarily the percentage of producer milk receipts that must be shipped by pool supply plants operated by both proprietary and cooperative association handlers under the Eastern Ohio-Western Pennsylvania Federal milk order. The proposed action would increase, beginning with the month of October 1989, the percentage of milk that must be shipped by pool supply plants to fluid milk processing plants from 40 percent to 50 percent during the months of October and November, and from 30 percent to 40 percent in other months. The percentage of producer milk that is handled by a cooperative association that must be delivered to distributing plants in order to qualify for pooling plants operated by the cooperative association would be increased from 35 percent to 45 percent. The action was requested by two proprietary handlers who operate fluid milk processing plants that are pooled under the order in order to assure consumers of an adequate supply of fluid milk products.

DATES: Comments are due no later than September 29, 1989.

ADDRESSES: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that an adequate supply of fresh fluid milk will be available to consumers.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and paragraph (f) of § 1036.7 of the order, the temporary revision of certain provisions of the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is being considered, beginning with the month of October 1989.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the **Federal Register**. The period for filing comments is limited to seven days because a longer period would not provide the time needed to complete the required procedures and include October 1989 in the temporary revision period.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Statement of Consideration

The provisions proposed to be revised are the pool supply plant shipping percentages set forth in § 1036.7 (b) and (d). The revisions would be effective beginning with the month of October 1989. The specific revisions would increase the supply plant shipping percentages by 10 percentage points, from 40 percent to 50 percent during the months of October and November, and from 30 percent to 40 percent during all other months. The percentage of a cooperative association's producer milk that must be shipped to distributing pool plants or to nonpool plants when Class II or Class III classification is not requested if the cooperative plants are to be considered pool plants would be increased by 10 percentage points, from 35 percent to 45 percent, for all months or for the immediately preceding 12-month period.

Section 1036.7(f) of the Eastern Ohio-Western Pennsylvania milk order allows the Director of the Dairy Division to increase or decrease the order's delivery requirements by up to 10 percentage points during any month to obtain needed shipments or to prevent uneconomic shipments.

United Dairy, Inc. and Hillside Dairy, Inc., two proprietary handlers which operate pooled distributing plants under the Eastern Ohio-Western Pennsylvania order, requested that the percentage of a supply plant's producer milk that is required to be shipped to fluid milk plants be increased 10 percentage points as soon as possible to enable handlers to provide consumers with an adequate supply of fluid milk products. October 1989 is the earliest possible period for which the requested revision could be effective. The handlers did not specify when the requested temporary revision would cease to be necessary.

The handlers state that the cooperative association from whom they receive the majority of their milk supplies has informed them that the cooperative will no longer be able to supply all of the handlers' Class I fluid milk requirements beginning with the end of August 1989. The handlers state that the shortfall in their receipts of milk is expected to amunt to approximately 10-20 percent of their total Grade A milk requirements. They further state that they have been unable to replace this milk on an economic basis from other dairies and manufacturing plants, even though the market's producer milk used in Class I products is less than 60 percent.

Therefore, it may be appropriate to increase the aforementioned provisions of § 1036.7(b) and (d) beginning with the month of October 1989 to obtain needed shipments of milk.

List of Subjects in 7 CFR Part 1036

Dairy products, Milk, Milk marketing orders.

The authority citation for 7 CFR part 1036 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Signed at Washington, DC, on September 18, 1989.

W. H. Blanchard,

Director, Dairy Division.

[FR Doc. 89–22376 Filed 9–21–89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 436

Trade Regulation Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures

AGENCY: Federal Trade Commission.

ACTION: Reopening of comment period on advance notice of proposed rulemaking for supplementation of comments.

SUMMARY: The Federal Trade Commission has granted a request to reopen the public comment period for 60 days, until November 21, 1989, for supplementation of prior comments on an Advance Notice of Proposed Rulemaking for possible amendments to its trade regulation rule concerning franchises and business opportunity ventures (16 CFR part 436). The original comment period on the Advance Notice published on February 16, 1989 [54 FR 7041], closed on June 16, 1989 (54 FR 14662).

DATES: Supplemental comments will be accepted until November 21, 1989.

ADDRESSES: Written comments should be addressed to the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. All comments should be captioned: "Supplemental Comment on Advance Notice of Proposed Rulemaking—Franchise Rule—Earnings Claim Disclosures, FTC file No. R011007.

FOR FURTHER INFORMATION CONTACT: Craig Tregillus, Franchise Rule Coordinator, PC–H–238, Federal Trade Commission, Washington, DC 20580. (202) 326–2970.

SUPPLEMENTARY INFORMATION: In an Advance Notice of Proposed Rulemaking ("ANPR") published on February 16, 1989 (54 FR 7041), the Commission requested written public comment on whether it should consider amending the earings claim and preemption provisions of its trade regulation rule on franchises and business opportunity ventures ("Franchise Rule") (16 CFR part 436). The comment period closed on June 16, 1989 (54 FR 14662).

On July 24, 1989, the International Franchise Association ("IFA") filed a request for a reopening of the public comment period to permit supplementation of prior comments on the Franchise Rule ANPR. The IFA is a national trade association representing some 650 franchisors directly affected by the Franchise Rule.

The IFA request seeks the reopening to permit supplementation of previously filed comments in response to a draft "Model Franchise Investment Act" issued by the North American Securities Administrators' Association ("NASAA") of July 17, 1989, one month after the ANPR comment period closed. The NASAA draft contains model franchise registration and disclosure requirements, including provisions affecting the termination, non-renewal and transfer of franchises, for possible enactment by states that do not yet have laws regulating the sale of franchises.

The Commission believes that the draft Model Act released by NASAA may bear significantly on the uniformity issues raised by the ANPR. Accordingly, the Commission has determined that the comment period on the ANPR should be reopened for the limited purpose of supplementation of previously filed comments. The Commission therefore will accept supplemental submissions on the Franchise Rule ANPR until November 21, 1989.

List of Subjects in 16 CFR Part 436

Franchising, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89–22441 Filed 9–21–89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI–42–89]

RIN: 1545–AN68

Treatment of Salvage and Reinsurance Under Section 832(b)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the treatment of salvage and reinsurance in determining the paid and unpaid losses of property and casualty insurance companies. The text of the temporary regulations also serves as the comment document for this notice of proposed rulemaking.

DATES: Written comments and requests for a public hearing must be delivered by November 21, 1989. The amendments to § 1.832–4T of the regulations are proposed to be effective for taxable years beginning after December 31, 1988. Section 1.832–7T is proposed to be effective for taxable years beginning before January 1, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Office of Chief Counsel, Attn: CC:CORP:T:R (FI–42–89), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Branch 4 (CC:FI&P:4), P.O. Box 7604, Ben Franklin Station, Washington, DC 20044, (202) 566–3294 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations published in the Rules and Regulations section of this issue of the **Federal Register** amend temporary regulations § 1.932–4T and add a new temporary regulation § 1.832–7T to part 1 of title 26 of the Code of

Federal Regulations. The amended and new temporary regulations provide rules relating to the treatment of salvage and reinsurance under section 832(b)(5) of the Internal Revenue Code of 1986. Accordingly, the text of the amended and new temporary regulations serves as the comment document for this notice of proposed rulemaking. In addition, the preamble to the temporary regulations provides a discussion of the proposed and temporary rules.

For the text of the temporary regulations, see T.D. 8266 published in the Rules and Regulations section of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who submits written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is William L. Blagg of the Office of the Assistant Chief Counsel (Financial Institutions and Products), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89-22106 Filed 9-21-89; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[INTL-0053-89]

RIN 1545-AM91

Requirements For Investments To Qualify Under Section 936(d)(4) as Investments in Qualified Caribbean Basin Countries

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains proposed regulations relating to the requirements that must be met for an investment by a possessions corporation in a financial institution in Puerto Rico to qualify as qualified possession source investment income. Changes to the applicable tax law were made by the Tax Reform Act of 1986. These regulations would provide guidance as to the requirements that must be met for an investment by a possessions corporation to qualify under section 936(d)(4) of the Internal Revenue Code of 1986. In the Rules and Regulations portion of this **Federal Register**, the Internal Revenue Service is issuing temporary regulations relating to the requirements that must be met for an investment by a possessions corporation in a financial institution in Puerto Rico to qualify as qualified possession source investment income.

DATES: This regulation is proposed to be effective for investments by possessions corporations in a financial institution, that are used by a financial institution for investments in accordance with a specific authorization granted by the Commissioner of Financial Institutions after September 22, 1989. Comments and requests for a public hearing must be delivered or mailed by November 21, 1989.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, (Attention: CC:LR:T, INTL-0053-89, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Christine Halphen (202-377-9493, not a toll free call) or W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (Attention: CC:CORP:T:R (INTL-0053-89) (202-287-4851, not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1545-1138), Washington, DC 20503, with copies to the Internal Revenue Service, Attention: IRS Reports Clearance Officer T:FP, Washington, DC. 20224.

The collection of information in these regulations is in § 1.936-10T(c). This information is required by the Internal Revenue Service to verify that an investment qualifies under section 936(d)(4). The likely respondents are possessions corporations, certain financial institutions located in Puerto Rico, and borrowers of funds covered by this regulation.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents/recordkeepers may require greater or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 1,500 hours.

The estimated average annual burden per recordkeeper is 30 hours.

Estimated number of recordkeepers: 50.

Background

The temporary regulations published in the Rules and Regulations portion of this issue of the **Federal Register** add new § 1.936-10T(c). The final regulations that are proposed to be based on the temporary regulations would amend 26 CFR parts 1 and 602. For the text of the temporary regulations, see T.D. 8268 published in the Rules and Regulations portion of this issue of the **Federal Register**.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required.

Comments and Request for a Public Hearing

Before adopting these proposed regulations, consideration will be given

to any written comments that are submitted (preferably a signed original and seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request by any person who submits written comments on the proposed rules. Notice of the time and place for the hearing will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is W. Edward Williams of the Office of the Associate Chief Counsel (International) within the Office of Chief Counsel, Internal Revenue Service. Other personnel from offices of the Internal Revenue Service and the Treasury Department participated in developing these regulations.

List of Subjects

26 CFR 1.861–1 through 1.997–1

Income taxes, Corporate deductions, Aliens, Exports, DISC, Foreign investments in U.S., Foreign Tax credit, FSC, Source of income, U.S. investments abroad.

26 CFR Part 602

Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

The temporary regulations (T.D. 8268), published in the Rules and Regulations portion of this issue of the **Federal Register,** are hereby also proposed as final regulations under section 936(d)(4) of the Internal Revenue Code of 1986.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89–22349 Filed 9–21–89; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Parts 1 and 602

[IA–9–89]

RIN 1545–AN09

Certain Elections Under the Technical and Miscellaneous Revenue Act of 1988

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register,** the Internal Revenue Service is issuing temporary amendments to the regulations by providing rules for the time and manner of making certain elections under the Technical and Miscellaneous Revenue Act of 1988. The text of those temporary regulations also serves as the comment document for this proposed rulemaking.

DATES: The regulations contained in this document are proposed to be effective November 10, 1988, and, except as otherwise provided, the regulations apply to elections made on or after that date. Written comments and requests for a public hearing must be delivered or mailed by November 21, 1989.

ADDRESS: Send comments and requests for a public hearing to: Internal Revenue Service, Attention: CC:CORP:T:R (IA–9–89), Room 4429, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Grace Matuszeski, 202–343–2382 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer TR:FP, Washington, DC 20224.

The collections of information in this regulation are in sections 1(i)(7), 41(h), 42(b)(2)(A)(ii), 42(d)(3), 42(f)(1), 42(g)(3), 42(i)(2)(B), 42(j)(5)(B), 121(d)(9), 142(i)(2), 165(l), 168(b)(2), 219(g)(4), 245(a)(10), 263(d)(1), 263A(d)(3)(B), 263A(h), 460(b)(3), 643(g)(2), 831(b)(2)(A), 835(a), 865(f), 865(g)(3), 865(h)(2), 904(g)(10), 2056(b)(7)(C)(ii), 2056A(d), 2523(f)(6)(B), 3127, and 7520(a) of the Internal Revenue Code and also under sections 1002(a)(23)(B), 1005(c)(11), 1006(d)(15), 1006(j)(1)(C), 1006(t)(18)(B), 1012(n)(3), 1014(c)(1), 1014(c)(2), 2004(j)(1), 2004(m)(5), 5012(e)(4), 6181(c)(2), and 6277 of the Technical and Miscellaneous Revenue Act of 1988. This information is required by the Internal Revenue Service to determine the taxpayers' decisions regarding elections. This information will be used in examinations and audits. The likely respondents are individuals or households, farms, business or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances. Estimated total annual reporting burden: 6,712 hours. The estimated annual burden per respondent varies from 15 minutes to 2 hours depending on individual circumstances, with an estimated average of .28 hours. Estimated number of respondents: 24,305. Estimated annual frequency of responses (for reporting requirements only): once (for each respondent).

Background

The temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend part 5h of title 26 of the Code of the Federal Regulations. These amendments reflect the provisions of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. 100–647, 102 Stat. 3342) (the Act). For the text of the temporary regulations, see T.D. 8267, published in the Rules and Regulations portion of this issue of the **Federal Register.** A general discussion of temporary regulations is contained in the preamble to the regulations.

Special Analyses

It has been determined that these proposed regulations will not be major regulations as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations are being sent to the Administrator of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Internal Revenue Service by any person who also submits comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these regulations is Grace Matuszeski, Office

of Assistant Chief Counsel (Income Tax and Accounting), Internal Revenue Service. However, other personnel from the Service and Treasury Department participated in their development.

Fred T. Goldberg, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 89-22351 Filed 9-21-89; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 920

Maryland Permanent Regulatory Program; Public Notice; Permitting; Fish and Wildlife; Inspection and Enforcement.

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: OSMRE is announcing the receipt of proposed amendments to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments concern proposed changes to the Code of Maryland Administrative Regulations (COMAR) and are intended to incorporate regulatory changes initiated by the State. The proposed amendments would change certain permit application requirements and review procedures; would modify the petition procedures for lands unsuitable designations; would change certain requirements for fish and wildlife protection; and, would modify inspection and enforcement procedures.

This notice sets forth the times and locations that the Maryland program and proposed amendments to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendments, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on October 23, 1989. If requested, a public hearing on the proposed amendments will be held at 1:00 p.m. on October 17, 1989; requests to present oral testimony at the hearing must be received on or before 4:00 p.m. on October 10, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to: Mr. James C. Blankenship, Jr., Director, Charleston Field Office, at the address listed below. Copies of the proposed amendments and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive, free of charge, one copy of the proposed amendments by contacting OSMRE's Charleston Field Office.

Office of Surface Mining Reclamation and Enforcement, Charleston Field Office, 603 Morris Street, Charleston, West Virginia 25301, Telephone: (304) 347-7158.

Maryland Bureau of Mines, 69 Hill Street, Frostburg, Maryland 21532, Telephone: (301) 689-4136.

FOR FURTHER INFORMATION CONTACT: James C. Blankenship, Jr., Director, Charleston Field Office, Telephone (304) 347-7158.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, Federal Register (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are contained in 30 CFR 920.16.

II. Discussion of Proposed Amendments

By letter on July 8, 1986, the Office of Surface Mining Reclamation and Enforcement (OSMRE) transmitted to Maryland a list of deficiencies which the OSMRE had determined to be less effective than the Federal requirements for surface mining and reclamation operations (Administrative Record No. MD 351). After informal discussions with OSMRE on several items, on June 20, 1988, and December 27, 1988, the Maryland Department of Natural Resources, Energy Administration, Bureau of Mines (MDBOM) responded to the July 8, 1986, letter with the following additional proposed amendments to Maryland's federally approved program (Administrative Record No. MD 382).

In COMAR 08.13.09.01 B(22), General, a definition of "cumulative impact area" is added.

In COMAR 08.13.09.02 D, Permit Applications: General Requirements, the requirements that technical analysis be planned by, or accomplished under, the direction of a professional qualified in the subject to be analyzed is added.

In COMAR 08.13.09.02I(11), the requirement that each permit application include a listing of each violation notice received by the applicant "or any subsidiary, affiliate, or persons, controlled by or under common control with the applicant" during the three year period before the application date is added. This section is further revised to include the requirement that a statement be provided in the application for each prior violation notice, as well as the date, location, and type of any administrative or judicial proceedings initiated concerning the violation, the current status of any proceedings of the violation notice, and the actions, if any, taken by any person identified in the application to abate the violation.

COMAR 08.13.09.02.K(2)(l) is deleted and replaced with detailed definitions regarding fish and wildlife resources information provision requirements.

In COMAR 08.13.09.02.K(2)(b), the nature of cultural and historic resources listed in the National Register of Historical Places (NRHP) is expanded to include those "eligible" for listing with NRHP.

In COMAR 08.13.09.02.L(1), the requirement that the applicant identify cultural or historical resources eligible for listing in the NHRP on the permit application map is added.

In COMAR 08.13.09.02.N(1), a required "preapplication investigation" is changed to a "preapplication reconnaissance inspection."

COMAR 08.13.09.02.O(8) is deleted and replaced with specific requirements for a Protection and Enforcement plan consistent with the requirements of COMAR Regulation .26 for fish and wildlife and related environmental values.

In COMAR 08.13.09.04, Permit Application Review Procedures, subparagraphs A(2) and A(3) are deleted and replaced by new paragraph A(2) which requires the applicant to submit to the MDBOM a copy of the National Pollutant Discharge Elimination System (NPDES) permit applications and any other permit required. Subparagraph B(3) is revised to outline the MDBOM's procedure following the receipt of an administratively complete permit application. Subparagraph D(3) is added to detail the requirements and procedures for processing permittees' confidential permit information.

COMAR 08.13.09.04.E is retitled "Public Participation." In subparagraph E(1), the statement is added that the MDBOM will also receive and consider written requests for a hearing on the application within 30 days from the

required last public advertisement of the permit application.

In COMAR 08.13.09.04F, On Site Inspection, the phrase "comment or objection" is replaced with "request for a hearing."

COMAR 08.13.09.04.G(2) is revised to include a statement that a permit applicant shall have the burden of establishing proof of his compliance with all regulatory program requirements.

In COMAR 08.13.09.04.G(4), the requirement of scheduling a public hearing is deleted and the MDBOM's responsibility to forward copies of the permit application to the agency responsible for issuing the NPDES permit and the Land Reclamation Committee (LRC) is defined.

COMAR 08.13.09.04.G(5) is added to require the MDBOM to schedule a visit to the proposed permit site by the LRC and to require the permit applicant to stake and flag the proposed mining areas prior to the visit.

COMAR 08.13.09.04.H, Public Hearing Notice, and COMAR 08.13.09.04.I, Land Reclamation Committee Review, are deleted.

In new COMAR 08.13.09.04.H, Public Hearing, subparagraph H(1) is revised to require joint public hearings with the LRC upon request. The previous State rule required public hearings for all permits. Subparagraphs H(2), H(3), H(5) and H(6) are revised to establish procedures for the public hearings.

In COMAR 08.13.09.04.I, Land Reclamation Committee Decision, subparagraph I(1) is revised to have the LRC vote on the reclamation plan occur at a committee meeting at the public hearing or at a meeting subsequent to but within 10 days of the hearing. The terms "deny/denied/denial" are replaced with corresponding variations of "reject."

In COMAR 08.13.09.04.K, Permit Approval, subparagraph K(1) contains several editorial revisions. Subparagraph M(2) is deleted and replaced with paragraph K(2) which defines the MDBOM's responsibility to issue a notice of permit application approval. Subparagraph M(3) is deleted. The subsequent sections are renumbered accordingly.

In COMAR 08.13.09.04.L, Permit Denial, subparagraph L(2) is revised to identify the timeframes and responsibilities of notification for the MDBOM.

In COMAR 08.13.09.05.A(3), reference to the "general" area is changed to the "cumulative impact" area and "proposed mine plan area" is changed to "proposed permit area."

COMAR 08.13.09.05.A(5) is deleted and replaced with a statement that the permit applicant must demonstrate that any existing structure will comply with the requirements of COMAR Regulation .20 for existing structures.

In COMAR 08.13.09.05.A(8), reference to prime farmlands is deleted and replaced with the statement that the applicant must satisfy the applicable requirements of COMAR Regulation .03 for special categories of mining.

In COMAR 08.13.09.05.A(9), the postmining land use definition is revised to require that the applicant satisfy the applicable provisions of COMAR Regulation .35 for approval of a long-term intensive agricultural postmining land use.

COMAR 08.13.09.05.D(9) is added to require the permittee to pay all reclamation fees required by OSMRE for coal produced under the permit.

COMAR 08.13.09.05.D(10) is added to require the permittee to pay all applicable fees and mine reclamation surcharges as required by the State Natural Resources Article, Title 7, Subtitle 5.

In COMAR 08.13.09.08, Permit Review and Transfer of Permit Rights, subparagraph c(5)(d) is added to require that the operator provide evidence of having liability insurance as a condition of permit renewal approval.

COMAR 08.13.09.08.D(1)(b) is revised to require that the operator furnish the MDBOM with a brief description of the proposed action requiring approval of the proposed transfer, sale or assignment of permit rights.

COMAR 08.13.09.08.D(4)(a) is revised to authorize approval of the permit transfer, sale or assignment of rights if the MDBOM finds the applicant eligible to receive a permit.

In COMAR 08.13.09.08.D(6), a requirement that the MDBOM notify all involved parties (owner/Federal/community, etc.) of its findings and decision is added.

In COMAR 08.13.09.08.D(7), the transferee is required to notify the MDBOM of the consummation of the sale or assignment of permit rights.

In COMAR 08.13.09.10 Areas where Mining is Prohibited or Limited, subparagraph A(4) revises the definition of a public building to mean any structure that is owned or leased by a governmental agency and used principally for public business, meetings, or other group gatherings.

COMAR 08.13.09.10C.(2), the phrase "had no valid existing rights for the area on August 3, 1977, or if the operation did not exist on that date" is replaced with "had no valid existing rights for the area, or if the operation did not exist on August 3, 1977."

COMAR 08.13.09.10.C(3) is revised to define the procedure by which the MDBOM, when unable to make a valid existing rights determination, refers the matter to another agency and defines the timeframe (60 days maximum) in which the assigned agency has to respond before the MDBOM makes the determination unilaterally based upon the available information.

COMAR 08.13.09.10.C(4)(c), is revised to require that for those mining operations that are to be conducted within 100 feet from the outside right-of-way boundary of a public road or which require the relocation of a public road, the MDBOM must make a written finding after completion of the hearing or after any public comment period if no hearing is held. The distance restriction is imposed unless the MDBOM determines that public interest and affected landowners will be protected.

COMAR 08.13.09.10.C(5) is revised to require that for those situations where a proposed coal mining operation is to be conducted within 300 feet of any occupied dwelling, a written waiver be submitted with the application by the dwelling owner stating that the owner and signatory had the legal right to deny mining and knowingly waived that right and consented to the operations. It is also required that a subsequent purchaser shall be deemed to have record knowledge if the waiver has been properly filed in public property records pursuant to state laws or if the mining has proceeded to within the 300 feet limit prior to date of purchase.

COMAR 08.13.09.10.C(7), is revised to require the MDBOM, upon determining that a proposed surface mining operation will adversely affect any public park, or any publicly owned places included on the National Register of Historic Places, provide to the respective cognizant agency the applicable parts of the permit application (instead of a copy of the entire application) and a notice that the agency has 30 days to respond (may be extended to 60 days). Failure to file an objection within the time limit is considered approval of the proposed permit.

In COMAR 08.13.09.11, Designation of Areas Unsuitable for Mining, subparagraph B is revised to define the right of an interested person to petition to have an area designated as unsuitable for surface coal mining operations or to have a designation ended. Subparagraph C is revised to establish the minimum required information for a petition and to define

the MDBOM's right to request supplementary information and documentation.

Subparagraph 08.13.09.11.G(1) is revised to allow the MDBOM 60 days to notify the petitioner as to whether the petition is complete.

Subparagraph G(2) is revised to authorize the MDBOM to return a petition to the petitioner if the petition is incomplete, frivolous or if the petitioner does not have an interest which is, or which may be, adversely affected.

Subparagraph G(4) is revised to define a frivolous petition. In subparagraph G(5) "new allegations" is changed to "significant new allegations."

Subparagraph G(8) is revised to require the MDBOM to publish a newspaper advertisement notifying the public of the petition receipt and to indicate that the MDBOM will make petition copies available to interested agencies, intervenors and persons.

Subparagraph G(9) is revised to require a second public notice in newspapers upon a determination by the MDBOM that the petition is complete. The public notice will request submissions from the general public of relevant information and will be placed once a week for two consecutive weeks.

Subparagraph G(10) is revised to require that the MDBOM maintain a record of information pertaining to the petition and a copy of the petition, at a minimum, in an area at or near the petitioned land.

Subparagraph G(12) is revised to allow the MDBOM to subpoena witnesses as necessary. Cross examination of expert witnesses only is permitted and no person is to bear the burden of proof or persuasion. All relevant parts of the data base, inventory system and public comments are to be included in public record and considered in the MDBOM's decision regarding the petition.

COMAR 08.13.09.11.H(2) is revised to change the method the MDBOM uses to notify various parties of its decision regarding the petition.

In COMAR 08.13.09.26, Fish and Wildlife Protection, subparagraph A is edited, without apparent significant impact.

Subparagraph B is revised to prohibit mining likely to jeopardize endangered or threatened species.

Subparagraph C is revised to require the permittee to notify the MDBOM if he becomes aware of any threatened or endangered species within the permit area.

Subparagraph E prohibits the taking of endangered or threatened species in violation of the Endangered Species Act 1973, as later amended, and the Bald Eagle Protection Act, as amended.

Subparagraph D is changed to subparagraph F and subsequent sections are renumbered accordingly.

Subparagraph H is modified to require that if cropland is to be the postmining use and where appropriate for wildlife and crop-management practices, and the landowner approves, an operator shall, to the extent possible, diversify habitat types.

COMAR 08.13.09.26.J is added to require that wetlands and riparian vegetation areas be protected and enhanced by the operator.

In COMAR 08.13.09.40, Inspection and Enforcement, subparagraph B(1) is revised to define partial inspections and the frequency with which they are to be conducted.

Subparagraph B(2) defines a complete inspection and the frequency with which they are to be conducted.

Subparagraph B(4) generally describes and defines an aerial inspection. Subparagraph B(5) requires that a potential violation observed in an aerial inspection be investigated on site within three days, with the exception that if the violation appears to be cause for issuance of a cessation order, the site is to be investigated within one day.

In subparagraph B(6), the terms "violation notice" and "order" are replaced with "notice of violation" and "cessation order", respectively.

In subparagraph B(7), inactive surface mining and reclamation operation are defined.

In subparagraph B(8), the MDBOM is required to continue inspecting all surface mining and reclamation operations until the reclamation of Phase III is completed.

Appended to COMAR 08.13.09.40.D(1) is a requirement that all enforcement records be open to public inspection for at least five years after active operations have ceased or any part of the site is covered by any portion of a performance bond.

COMAR 08.13.09.40.E(6) is added to allow any person adversely affected by a surface mining operation to notify the Director of the MDBOM in writing of any alleged failures by the MDBOM to enforce its regulatory program on a permit site. The Director is required to investigate the adequacy of the MDBOM inspections within fifteen days of receipt of notification and to respond to the complainant.

COMAR 08.13.09.40.G is revised to replace the term "cease and desist order" with "cessation order."

COMAR 08.13.09.40.H, is modified to allow that service of notices and orders may be effected by certified mail to the last address the permittee has filed, in writing, with the MDBOM. Service on an unpermitted operation may also be effected by certified mail.

COMAR 08.13.09.40.I(1) is revised to replace the terms "violation notice" and "cease or desist order" with "notice of violation" and "cessation order". Also added is the requirement that the informal conference shall be held within thirty days of receipt of request.

In subparagraph I(2), the term "automatically schedule" is replaced with "hold."

A new subparagraph I(4) is added to require, in regard to a notice of violation (NOV) or cessation order (CO), that the MDBOM notify the operator in writing that an enforcement conference will be held within thirty days of service of the NOV or CO.

Subparagraph I(4)(a) requires the notice to be delivered to the operator at the time of service or be sent by certified mail no later than five days after it is saved.

Subparagraph I(4)(b) requires that the notice inform the operator that the enforcement conference will be considered waived unless the operator notifies the MDBOM of his planned attendance within thirty days after service of the order.

Subparagraph I(4)(c) requires the MDBOM to inform the operator that he is considered to have consented to an extension of time for holding the informal review conference if notification under subparagraph I(4)(b) is received by the MDBOM on or after the 21st day after service of the NOV or CO.

Subparagraph I(4) is changed to I(5) and subsequent sections have been renumbered accordingly. In subparagraph I(7), the MDBOM is required to notify in writing any person who filed a report which led to the NOV or CO of its decision to affirm, modify or vacate the notice or order.

Subparagraph I(8) is added to specify that the granting or waiving of the enforcement conference does not affect the operator's right to a formal review.

Subparagraph I(9) is added to specify that the person conducting the conference shall determine whether a mine site inspection is in order. In making this determination, the only consideration shall be whether a view of the mine site will assist in reviewing the appropriateness of the enforcement action or of the required remedial action.

In COMAR 08.13.09.40.J, Formal Review, the terms "violation notice" and "cease and desist" are replaced with "notice of violation" and "cessation."

In subparagraph J(2), the statement that "the Director of the Bureau or his designee shall preside over the hearing" is deleted.

Subparagraph J(3) is revised to permit the requestor for a hearing to file a written request that the hearing officer grant temporary relief from the NOV or CO along with a statement or justification for granting the relief. The hearing officer is directed to render a decision as expeditiously as possible regarding the request.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(b), OSMRE is now seeking comments on whether the amendments proposed by Maryland satisfy the applicable program approval criteria of 30 CFR 732.17. If the amendments are deemed adequate, they will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Charleston Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on October 10, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public, meeting rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the location under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 920

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Dated: September 13, 1989.

Alfred E. Whitehouse,

Acting Assistant Director Eastern Field Operations.

[FR Doc. 89-22409 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3649-6]

Approval and Promulgation of Implementation Plan for E.I. DuPont de Nemours & Company's Sabine River Works Bubble in Orange, TX

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is proposing approval of the E.I. DuPont de Nemours and Company's Sabine River Works Alternative Emission Reduction Plan ("Bubble") that uses emission reduction credits from the shutdown of sixteen methanol storage tanks and a methanol truck and railcar loading terminal in lieu of controls on three storage tanks. EPA is also soliciting comments on the question of the validity of the credit donating source's baseline emissions determination. Specifically, this action trades emission reductions from the shutdown of sixteen methanol storage tanks and a methanol truck and railcar loading terminal in lieu of controls on one cyclohexane storage tank and two methanol storage tanks at DuPont's Sabine River Works Plant in Orange, Texas. The use of emission reduction credits from source shutdowns is consistent with EPA's proposed Emissions Trading Policy Statement of April 7, 1982 (47 FR 15076), and the final Emissions Trading Policy Statement of December 4, 1986, (51 FR 43814).

DATES: Comments must be received by October 23, 1989.

ADDRESSES: Copies of the State's submittals and incorporation by reference materials are available for review during normal business hours at the following locations.

Texas Air Control Board, 6330 Hwy. 290 East, Austin, Texas 78723.

Environmental Protection Agency, Air Programs Branch, Region 6, 1445 Ross Ave., Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, SIP/New Source Section, Air Programs Branch, Air, Pesticides & Toxics Division, EPA Region 6, 1445 Ross Ave., Dallas, Texas 75202 (214) 655-7214, or FTS 255-7214.

SUPPLEMENTARY INFORMATION: On March 12, 1982, the Governor of Texas, after adequate notice and public hearing, submitted revisions to the Texas SIP. Specifically, the State submitted an Alternative Emission Reduction Plan for the E.I. DuPont de Nemours and Company's, Sabine River Works Plant in Orange, Texas.

The DuPont Company is proposing to trade the emission reductions resulting from the shutdown of sixteen methanol storage tanks and a methanol truck and railcar loading terminal in lieu of controls on one cyclohexane storage tank and two methanol storage tanks. Specifically, the bubble trade will involve the emission reductions of 30.9 tons per year of methanol resulting from the shutdown in lieu of required controls on the three tanks containing cyclohexane and methanol (21.4 tons per year). Thus, an emission trade air quality benefit of 9.5 tons per year will result from the DuPont alternative control strategy.

The use of emission reduction credits from source shutdowns is consistent with EPA's interim Emissions Trading Policy Statement (ETPS) of April 7, 1982, and the Final ETPS of December 4, 1986. In addition, the policy of allowing credits for shutdowns was discussed in an August 31, 1989 Federal Register (48 FR 39580). In that notice the agency reaffirmed its policy of allowing shutdown credits in nonattainment areas with an approved demonstration of attainment. Rural ozone nonattainment areas need only require RACT to satisfy a demonstration of attainment and therefore may use shutdown credits.

This trade is based on allowable emissions. Emissions were calculated using information supplied by the source and are summarized below.

EMISSIONS (TON/YEAR)

[Allowable]

Sources	Before bubble	After bubble	Change
Uncontrolled tanks	0.8	22.2	+21.4
Shutdown tanks	12.8	0	−12.8
Shutdown terminals	18.1	0	−18.1
Total	31.7	22.2	−9.5

Emissions were calculated using tank factors and throughput data supplied by the source using maximum throughput rates and operating rates for the credit donating sources. The post bubble allowable emissions for the credit receiving sources were determined using maximum throughput values for the equations of a fixed roof tank. This bubble was developed under the 1982 policy which was ambiguous on whether allowable emissions could be used for credits. A net decrease in emissions of 9.5 tons per year is provided for by the bubble.

DuPont applied to the State for this alternative control on July 28, 1981. Actual shutdown of the storage tanks and terminals occurred in December of 1981. The shutdowns were due to the discontinuance of a methanol manufacturing facility.

The source is located in Orange County, Texas, a rural ozone nonattainment area when the 1979 Texas State Implementation Plan (SIP) was developed. The 1979 Texas SIP implemented reasonably available control technology in this area. A demonstration of attainment and reasonable further progress was not required for this area. The most recent available years of ozone ambient air quality data are as follows:

Year	NAAQS (ppm)	Highest value (ppm)	No. of violations
1982	.12	.140	2
1983	.12	.130	1
1984	.12	.200	2
1985	.12	Monitor not operational	NA
1986	.12	.140	3
1987	.12	Monitor not operational	NA
1988	.12	Monitor not operational	NA

This DuPont bubble was reviewed by following the guidance criteria established in the proposed Emissions Trading Policy Statement (ETPS) published in the **Federal Register** on April 7, 1982, and the final ETPS of December 4, 1986. This bubble is a pending bubble. The final ETPS states as follows:

TREATMENT OF PENDING BUBBLE APPLICATIONS. "Pending bubbles" means those which are currently pending at EPA Regions or Headquarters, as well as any bubble applications which were formally submitted to EPA Regions under the 1982 policy but returned without action because final bubble criteria had not yet been issued. In primary nonattainment areas needing but lacking demonstrations, these bubbles should contribute to progress towards attainment. "Progress towards attainment" means some extra reduction beyond equivalence, with the lowest-of-actual-SIP-allowable-or-RACT-allowable emissions baseline applied as the time applicants originally sought credit. In other areas these bubbles must show that applicable standards, increments, and visibility requirements will not be jeopardized. Pending bubbles which meet these tests and all other applicable requirements of the 1982 policy will be processed for approval. (51 FR 43840).

The Final ETPS sets out current EPA policy for approving bubbles. EPA policy differs depending on whether the bubble is in a nonattainment area with an approved attainment demonstration ("NAWAD") or a nonattainment area lacking an approved attainment demonstration ("NALAD").

A bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. 51 FR 43838 col. 3.

A bubble in a NALAD is approvable only if it meets the following three requirements:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable [1] values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(iii) The State must provide assurances that the Proposed trade will be consistent with its efforts to attain the ambient standard. The Final ETPS sets out five representations that the State must make.
51 FR 43839–40.

EPA believes that these NALAD policy elements are necessary to ensure that the bubble will not interfere with attainment as expeditiously as practicable, as required under 42 U.S.C. 110(a)(2) and 7502.

However, the Final ETPS relaxes these NALAD requirements for pending bubbles. A pending bubble is defined as a bubble submitted by the State to EPA before EPA published the Final ETPS. 51 FR 43840 col. 2. The rules for a pending bubble in a NALAD are as follows:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce some reduction—but need not produce a 20% reduction—in the emissions remaining after application of the baseline specified above.

State assurances are not required for a pending bubble. 51 FR 43840.

[1] RACT refers to Reasonably Available Control Technology.

Grandfathering Principles

Because the Final ETPS is a policy statement, it does not set out requirements that apply with equal force in all circumstances. Beyond this, the actions proposed in today's notice are consistent with the principles of grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former policy to certain actions pending before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new rule represents an abrupt departure from well-established practice, (ii) affected parties have relied on the old rule; (iii) the new rule imposes a large burden on those affected, and (iv) there is no strong statutory interest in applying the new rule generally. *Sierra Club* v. *EPA*, 719 F.2d 436 (D.C. Cir. 1982), *cert. den.* 468 U.S. 1204 (1984).

Proposed Ozone Strategy and SIP Calls

By notice dated November 24, 1987, EPA published a proposed policy ("Proposed Ozone Strategy") to address the fact that many areas in the country were not expected to attain the NAAQS for ozone (and carbon monoxide) by the end of 1987, the latest date for attainment expressly identified in the Clean Air Act, 42 U.S.C. 7502. 52 FR 45044. In general, EPA stated that in the spring of 1988, it would issue SIP calls to areas where, based on recent monitoring data, EPA determined that the SIPs were substantially inadequate to attain the NAAQS. The issuance of SIP calls would trigger a new round of SIP development by the states.

EPA proposed to require that the states that receive SIP calls develop revised inventories within one year of the SIP call, and develop and submit for EPA approval new SIPs within two years of the SIP call. EPA further proposed to require that, in general, the new SIPs must persuasively demonstrate attainment of the NAAQS within five years of the SIP call (in order to avoid construction ban penalties). EPA further proposed to require that, in general, the State demonstrate that the SIP would produce expeditious progress in the interim before attainment. This

reasonable rate of progress would be an average annual emissions reduction of at least three percent in the base year inventory for the area. See 52 FR 45045.

On May 26, 1988, EPA issued SIP calls with respect to many areas of the country, including the areas to which this preamble applies. The SIP calls trigger a two-step planning process that ultimately should result in the creation of SIP revisions that will produce near-term attainment of the standards.

Application to DuPont

The State submitted this bubble to EPA before EPA published the Final ETPS on December 4, 1986. Thus, EPA considers this a "pending bubble" under the Final ETPS. At the time the state submitted this bubble, the area was classified as a NAWAD for purposes of applying the Final ETPS. As noted above, under the Final ETPS, a bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. At the time the State submitted this bubble, it met these requirements.

The review covered seven procedural and four technical requirements outlined in the proposed bubble policy. The DuPont Bubble was reviewed against the following procedural requirements: (1) Emission trades must involve the same pollutant, (2) all uses of emission reduction credits must satisfy ambient tests, (3) trades should not increase net baseline emissions in nonattainment areas, (4) emissions trades should not increase hazardous pollutants, (5) emissions trades cannot be used to meet technology based requirements, (6) provisions for trades involving open dust and, (7) the bubble must be submitted to EPA as a SIP revision. Further, the DuPont Bubble was reviewed against the following technical requirements: (1) The emissions must be surplus, (2) the provisions of the bubble must be enforceable, (3) the emissions must be permanent, and (4) all of the emission reductions must be quantifiable.

This bubble prohibits the storage of VOCs in any credit donating tanks. This is specified in the Board Order record keeping requirements which, among other things, requires the name of material stored to be recorded on a monthly basis. An emission limit of "0" tons/year means absolutely no storage of any VOCs is permitted. (i.e. no significance level is permitted)

To make this bubble approveable, the State must provide evidence that there has been no "shifting demand"; that is, that the VOCs that have been shifted out of the credit donating sources have not been shifted elsewhere within the nonattainment area.

EPA has developed an evaluation report [1] which discusses in detail the review of the procedural and technical aspects of the revisions. This evaluation report is available for inspection by interested parties during normal business hours at the EPA Region 6 Office and the Texas Air Control Board office listed above.

While EPA was considering this bubble, it received additional information that the SIP for Orange County, Texas, does not in fact provide for attainment by the end of 1987. In the November 24, 1987, Federal Register notice describing EPA's proposed policy for areas that are not expected to attain by the end of 1987, EPA stated that a SIP call would likely be issued for this area. 52 FR 45100-03. On May 26, 1988, EPA issued the SIP call for this area.

A SIP call, as a finding by EPA under Clean Air Act section 110(a)(2)(H) that the SIP is "substantially inadequate" to achieve the NAAQS, amounts to a provisional finding that the area receiving the call is, for purposes of the general applicability of the Final ETPS, a nonattainment area lacking an approved demonstration ("NALAD").

The pending bubble requirements of the Final ETPS contemplate a bubble submitted by the State before publication of the Final ETPS, at a time when the area is a NALAD, with no EPA action on the bubble by the date of publication of the Final ETPS. These pending bubble requirements do not explicitly contemplate the circumstances here, in which the bubble was submitted by the State before publication of the Final ETPS, at a time when the area was NAWAD, but the areas subsequently received a SIP call that converted it to NALAD before EPA acted on the bubble.

EPA has determined that different policy elements should apply to this pending bubble. EPA does not believe that the bubble should be required to use a trading baseline of the lower of actual, SIP-allowable, or RACT-allowable emissions, rather, the bubble may continue to use the baseline that is consistent with the assumptions in the applicable attainment demonstration. Nor is the bubble required to show any reduction in emissions beyond the baseline.

However, EPA does believe that for these bubbles, the State should provide certain State assurances. Specifically, the State must make the following representations to EPA:

(i) The State will submit to EPA during the comment period assurances that:

—The State will submit work plans with interim milestones for submitting the revised SIP and correcting deficiencies by the time specified by EPA under the Post-87 SIP call

—The State will submit, by the time specified by EPA, a complete plan that demonstrates attainment in accordance with the Clean Air Act and EPA policy.

—The State has dedicated appropriate resources to develop the new SIP

(ii) If the activities committed to in the above assurances are not met, EPA may propose to revisit its approval of emissions trade determinations depending on the degree of failure to meet the commitments.

EPA believes that if the State adequately makes these representations, EPA will be able to approve this bubble on grounds that it does not interfer with attainment and maintenance of the ozone NAAQS, in accordance with Clean Air Act section 110(a)(2). EPA believes that applying the policy elements described above would be consistent with the fact that the Final ETPS is a policy statement whose tests may not apply with equal force in all circumstances. Moreover, although the grandfathering principles under the case law described above do not literally apply in the case of this bubble because EPA has not issued any new rule, EPA believes that these principles provide a helpful analogy because of the changed circumstances—conversion from NAWAD to a NALAD— these areas found themselves in while EPA was considering the bubble application.

Specifically, EPA believes it appropriate to exempt this bubble from using a lower-of-actual-or-allowable baseline or providing progress beyond baseline emissions, on equitable grounds: the State and the source had submitted the bubble several years ago, and had relied on the area's classification as a NAWAD in submitting the bubble. Subjecting the bubble to the stricter baseline requirements and the progress requirements would be a significant burden because the bubble would likely require significant restructuring to be approvable, which would require the State to undergo its rulemaking process again. EPA is soliciting comments on this emission baseline question.

EPA further believes, however, that State assurances of the type described above are necessary. These assurances would protect the requirement of non-interference with attainment because the ongoing state planning process can

[1] EPA Review of the DuPont in May, 1989.

be expected to result in a SIP that will provide for attainment.

EPA has received, in letters from Texas dated May 31, 1988, and June 21, 1988, information that the baseline for the credit-donating sources was based on maximum throughput (i.e., maximum tank capacity), and not actual historical throughput. EPA solicits comments on the question of the use of allowable versus actual emissions for calculating baseline emissions.

The 1986 ETPS states that pending bubbles, such as this one, i.e., bubbles submitted before the 1986 ETPS was published, are approvable if they meet the criteria of the 1982 policy and show that the NAAQS will not be jeopardized. (51 FR 43831 col. 3) The 1982 policy did not address the baseline requirements for rural ozone nonattainment areas. Fur nonattainment areas with approved demonstrations of attainment, the 1982 policy stated:

> The baseline must be consistent with assumptions used to develop the area's SIP. Only reductions not assumed in the area's demonstration of reasonable further progress and attainment can be considered surplus. This generally means that actual emissions must be the baseline where actual emissions were used for such demonstrations, and that allowable emissions may be the baseline where allowable emissions were used for such demonstrations. [47 FR 15077 col. 3]

The 1982 policy further states

> In nonattainment areas, the baseline may be either maximum allowable emissions or actual historical emissions. To determine which baseline is appropriate, the state should examine the assumptions used in developing its demonstration of attainment. [47 FR 15080 col. 1]

The 1982 policy does not address rural ozone nonattainment areas because for 1979 SIPs such areas did not require attainment demonstrations. EPA is concerned that the above-quoted language can be construed to require the use of actual historical production or throughput values, and not maximum production or throughput, in such areas. It could be argued that the SIPs for rural ozone nonattainment areas were approved on the understanding that, given the current emission level in those areas, attainment would result when RACT controls were put in place in those areas, and the neighboring urban nonattainment areas reached attainment. Under this reasoning, it could be construed that approval of the SIPs for rural ozone nonattainment areas were based on actual emissions which would be analogous to the basis of approval of the attainment demonstration in urban nonattainment areas. However, since the 1982 policy was silent to this point, since 1979 SIPs in rural nonattainment areas did not require attainment demonstrations, and because this is a pending bubble action, EPA is today proposing approval of the bubble based on the use of the allowable baseline included in the State submittal. However, EPA solicits public comments on this question of the validity of the use of allowable versus actual emissions for calculating DuPont's baseline emissions. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above.

In summarizing, the DuPont Bubble meets the criteria set forth in the April 7, 1982 **Federal Register** that incorporates the Bubble Policy into a comprehensive Emissions Trading Policy Statement (ETPS), and the final ETPS of December 4, 1986. Therefore, EPA is proposing approval of the DuPont Bubble as discused above for incorporation into the Texas SIP, but is also soliciting comments on the question of the validity of the credit donating source's baseline emissions determination.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 1291 for a period of two years.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental Relations.

Dated: September 15, 1989.

Joe D. Winkle,

Acting Regional Administrator (6A).

[FR Doc. 89–22420 Filed 9–21–89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 300

[SW-FRL 3648-1]

National Oil and Hazardous Substances Contingency Plan; The National Priorities List; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete a site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the International Minerals & Chemical Corp. (Terre Haute East Plant) site (IMC), from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by EPA, because it has been determined that all Funds financed response under CERCLA have been implemented, and EPA in consultation with the State, has determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the IMC site.

DATE: Comments concerning the proposed deletion of the site from the NPL may be submitted until October 23, 1989.

ADDRESSES: Comments may be mailed to Nan Gowda (5HS–11), Remedial Project Manager, Office of Superfund, U.S. EPA, Region V, 230 S. Dearborn St., Chicago, IL 60604. The comprehensive information on the site is available at the local information repositories located at: Vigo County Library, One Library Square, Terre Haute, IN 47807; and the Vigo County Health Deparment, 201 Cherry, Terre Haute, IN 47807. Request for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is C. Feeeman (5HS–12), Region V, U.S. EPA, 230 South Dearborn Street, Chicago, IL 60604, (312) 886–6214.

FOR FURTHER INFORMATION CONTACT: Nan Gowda (5HS–11), U.S. EPA, Region V, Office of Superfund, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 353–9236; or Art Gasior (5PA–14), Office of Public Affairs, U.S. EPA, Region V, 230 South Dearborn Street, Chicago, Illinois, 60604, (312) 886–6128.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The U.S. Environmental Protection Agency (EPA) announces its intent to delete the IMC site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300 (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Superfund (Fund) Fund-financed remedial actions. Any site deleted from the NPL remains eligible for additional Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will accept comments on this proposal for 30 days after publication of this notice in the **Federal Register.**

Section II of this notice explans the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

The Agency believes it is appropriate to review all sites being considered or proposed for deletion from the NPL, including the site being noticed today, to determine whether the requirement for a five-year review (under CERCLA section 121(c)) applies. This is consistent with the intent of the statement in the Administrator's *Management Review of the Superfund Program* (the "90-day Study"), that "EPA will modify Agency policy so that no site, where hazardous substances remain, will be deleted from the NPL until at least one five year review is conducted and the review indicates that the remedy remains protective of human health and the environment." EPA will shortly issue its policy on when and how five-year review sites may be deleted from the NPL. This policy may have an effect on the timing of site deletions proposed in this and other notices.

II. NPL Deletion Criteria

The 1985 amendments to the NCP established the criteria the Agency uses to delete sites from the NPL, 40 CFR 300.66(c)(7), provide that sites "may be deleted or recategorized on the NPL where no further response is appropriate." In making this decision, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate.

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Prior to deciding to delete a site from the NPL, EPA must determine that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of a site from the NPL does not preclude eligibility for subsequent additional Fund-financed actions if future site conditions warrant such actions. Section 300.68(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter, revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.66(c)(7) has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Superfund Close Out Report and the establishment of the local information repository and the Regional deletion docket. These actions have been completed. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delete the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register.** However, it is not until the next official NPL rulemaking that the site would be actually deleted.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for intending to delete the Site from the NPL.

The IMC East Plant Site in southeastern Terre Haute, Indiana, is located in Vigo County, approximately 1.8 miles east of the Wabash River. The plant site has an area of approximately 37 acres. From 1946 to 1954, manufacturing, packing, and warehousing of technical grade benzene hexachloride (BHC-tech) occurred on a six-acre segment of this property. As a result of these operations, the site soils and groundwater became contaminated with BHC residues. Confirmed contamination of the groundwater is the reason that the site was proposed for inclusion on the NPL on October 15, 1984, and later made final on the NPL in June 1986.

Beginning in 1979, surface and core sampling/analysis were conducted by IMC to determine the extent of contaminated soil. In addition, monitoring wells were installed to determine potential impacts to the groundwater.

In 1980, IMC removed 18,500 cubic yards of contaminated materials. These materials were placed in an on-site mound above the elevation of the highest groundwater level, and secured by a clay cap. Excavation was carried out in all areas until soil samples contained less than 50 ppm BHC. The mound was encircled with a concrete drainage ditch, which diverts runoff water away from the edge of the mound toward a gravel infiltration area to the south. This disposal mound is surrounded by a security fence. Monitoring wells upstream and downstream of the mound have been sampled and analyzed quarterly since 1981. Contamination concentrations in the downgradient wells have decreased with time.

In August 1986, IMC and U.S. EPA signed an Administrative Order by Consent, in the matter of the IMC East Plant Site, to conduct a Remedial Investigation and Feasibility Study (RI/FS). In entering into this Consent Order, the mutual objectives of EPA and IMC were: (1) To determine fully the nature and extent of the threat to the public health or welfare or the environment

caused by the release or threatened release of hazardous substances into the environment from the East Plant site; and (2) to evaluate alternatives for the appropriate remedial action to prevent or mitigate the migration or the release or threatened release of hazardous substances from the Site, which includes evaluation of past remediation at the site and to evaluate the need for and appropriate extent of additional remedial action, if any.

As part of the RI/FS, a risk assessment was conducted. The purpose of the risk assessment was to determine the present or future potential adverse effects of the Site on public health and the environment. This assessment lead to the identification of the BHC in the groundwater. Groundwater was sampled and analyzed for BHC. One of the isomers of BHC, known as "gamma" isomer, or lindane, is a priority pollutant. Lindane was detected in groundwater immediately downgradient of the disposal mound during the RI. Contamination levels are lower than the Maximum Contaminant Level (MCL) confirmed by the body of data accumulated during quarterly monitoring program.

The data also show that these low levels of lindane are declining and are well below the Maximum Contaminate Level Goal (MCLG) of 0.2 ppb. All other ground-water sampling locations, on and off-site, showed no detectable lindane. The levels of lindane detected in soil were well below the 50 ppb target cleanup values established and implemented in 1980.

On June 22, 1988, the Regional Administrator of U.S. EPA Region V, approved a Record of Decision which selected the No Action alternative (monitoring and maintenance of existing system) as the preferred remedy for the IMC East Plant Site. This remedy includes periodic monitoring of groundwater, fence maintenance, and long-term maintenance of the cover system. All materials, including the soil disposed of in the clay-capped mound, would be left in place.

As part of the No Action remedy, the IMC Corporation, present owner of the IMC East Plant Site, will continue to monitor the groundwater semi-annually for the next 5 years and annually thereafter; maintain cap and site security; and, maintain deed restrictions on the site land use. There will be a performance and maintenance review every 5 years with U.S. EPA.

Concentrations of lindane in the groundwater declined relatively quickly after the construction of the mound, and has continued to decline since early 1983. Groundwater cleanup has occurred to MCLG levels, and contaminant concentrations continue to decline. The capping systems, fence, ground cover and monitoring program are reliable systems for prevention of contamination migration. Because the monitoring points are close to the mound, and because current groundwater contaminant levels are well below drinking water standards, early detection is possible, and no impact on downgradient groundwater users is anticipated.

The public health is further protected by the 5-year review of the selected remedy, as required by section 121(b)(2)(c) of SARA. Under the No Action scenario, contaminants would remain on-site, requiring review of the remedy at least every 5 years to assure protection of human health and the environment. If action under section 104 or 106 is appropriate, such action will be taken at that time.

The capping system, fencing, and ground cover are already in place and have proven effective over the past seven years of the record. Deed restrictions will state that no private use of this site will be permitted for the 30-year period. Therefore, the site remediation objectives, with respect to public health and environmental impacts, have been attained.

EPA, with the concurrence of the Indiana Department of Environmental Management, has determined that all appropriate Fund-financed responses under CERCLA at the IMC site have been completed, and no further cleanup by the responsible parties is appropriate.

Dated: September 7, 1989.

Frank M. Covington,

Acting Regional Administrator.

[FR Doc. 89-22076 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[SW-FRL-3649-4]

National Oil and Hazardous Substance Contingency Plan; The National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) announces its intent to delete the Petersen Sand and Gravel site from the National Priorities List (NPL) and requests public comment. The NPL is Appendix B to the National Oil and Hazardous Substance Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). This action is being taken by EPA, because it has been determined that all Fund financed response under CERCLA have been implemented and EPA, in consultation with the State, had determined that no further cleanup is appropriate. The intention of this notice is to request public comment on the intent of EPA to delete the Petersen Sand and Gravel site.

DATE: Comments concerning the proposed deletion of site may be submitted on or before October 23, 1989.

ADDRESSES: Comments may be mailed to David P. Seely, Remedial Project Manager, U.S. EPA, Office of Superfund, 230 S. Dearborn St., Chicago, Illinois, 60604. The comprehensive information on the site is available at your local information repository located at: Lake/Cook Memorial Library, 413 N. Milwaukee, Libertyville, Illinois, 60048.

Request for comprehensive copies of documents should be directed formally to the appropriate Regional Docket Office. Address for the Regional Docket Office is C. Freeman (5HS-12), Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois, 60604, (312) 886-6214.

FOR FURTHER INFORMATION CONTACT: David P. Seeley, Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois, 60604, (312) 886-7058 or Mary Ann Croce, 5PA-14, Office of Public Affairs, Region V, U.S. EPA, 230 S. Dearborn Street, Chicago, Illinois, 60604, (312) 886-1728.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Environmental Protection Agency (EPA) announces its intent to delete the Petersen Sand and Gravel site from the National Priorities List (NPL), Appendix B, of the National Oil and Hazardous Substance Contingency Plan (NCP), and requests comments on the deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Superfund (Fund) financed remedial actions. Any sites deleted from the NPL remain eligible for Fund-financed remedial actions in the

unlikely event that the conditions at the site warrant such action.

The site EPA intends to delete from the NPL is Petersen Sand and Gravel, Libertyville, Illinois.

The EPA will accept comments on this proposed deletion for 30 days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action and those that the Agency is considering using for future site deletions. Section IV discusses the history of the site and explains how the site meets the deletion criteria.

The Agency believes it is appropriate to review all sites being considered or proposed for deletion from the NPL, including the site being noticed today, to determine whether the requirement for a five-year review (under CERCLA section 121(c)) applies. This is consistent with the intent of the statement in the Administrator's *Management Review of the Superfund Program* (the "90-day Study"), that "EPA will modify Agency policy so that no site, where hazardous substances remain, will be deleted from the NPL until at least one five year review is conducted and the review indicates that the remedy remains protective of human health and the environment." EPA will shortly issue its policy on when and how five-year review sites may be deleted from the NPL. This policy may have an effect on the timing of site deletions proposed in this and other notices.

II. NPL Deletion Criteria

The 1985 amendments to the NCP established the criteria the Agency uses to delete sites from the NPL, 40 CFR 300.66(c)(7), provide that sites "may be deleted from or recategorized on the NPL where no further response is appropriate". In making this determination EPA will consider whether any of the following criteria has been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required.

(ii) All appropriate Fund-financed responses under CERCLA have been implemented; and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate.

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Before deciding to delete a site, EPA must make a determination that the remedy, or existing site conditions at sites where no action is required, is protective of public health, welfare, and the environment.

Deletion of the site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. § 300.66(c)(8) of the NCP states that Fund-financed actions may be taken at sites that have been deleted from the NPL.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for information purposes and to assist in Agency management.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.66(c)(7) has been met, EPA may formally begin deletion procedures. The first steps are the preparation of a Superfund Close-Out Report and the updating of the local information repository and the Regional deletion docket. These actions have been completed. This **Federal Register** notice, and concurrent notice in the local newspaper in the vicinity of the site, announce the initiation of a 30-day public comment period. The public is asked to comment on EPA's intention to delist the site from the NPL; all critical documents needed to evaluate EPA's decision are generally included in the information repository and the deletion docket.

Upon completion of the public comment period, the EPA Regional Office will prepare a Responsiveness Summary to evaluate and address concerns which were raised. The public is welcome to contact the EPA Regional Office to obtain a copy of this responsiveness summary, when available. If EPA still determines that deletion from the NPL is appropriate, a final notice of deletion will be published in the **Federal Register.** However, it is not until the next official NPL rulemaking that the site would be actually delisted.

IV. Basis for Intended Site Deletion

The following summary provides the Agenda's rationale for intending to delete this Site from the NPL: "Petersen Sand and Gravel Superfund Site", Libertyville, Illinois

The Petersen Sand and Gravel Site is located northeast of the intersection of Routes 21 and 137, approximately one mile north of Libertyville, Illinois. The site is comprised of about 20 acres in the northwest corner of the Petersen Sand and Gravel Pit. This area was used for the disposal of miscellaneous debris and hazardous materials including paint, paint waste and solvents.

Between 1955 and 1958, Mr. Petersen started allowing dumping of refuse in a 3-to-4 acre worked-out portion of the gravel pit. The refuse supposedly consisted primarily of construction debris, trees, tires, and other nonhazardous materials. When Mr. Petersen began accepting hazardous materials at the site is unknown.

In 1971, Petersen requested and was denied a landfill permit. Also in 1971, the Illinois Environmental Protection Agency (IEPA) investigated reports of illegal dumping and ordered immediate closure of the site. In 1973, the Illinois Pollution Control Board ordered Petersen to remove some of the wastes and cover refuse, among other requirements. Local residents reported in 1976 that approximately 500 drums of waste had not been removed. Between 400 and 500 55-gallon drums of paint and solvent wastes were removed from the site in 1977 by Mr. Petersen at the advice of the Illinois Attorney General.

In 1979, the Lake County Forest Preserve District (LCFPD) purchased a tract of land along the east bank of the Des Plaines River which included the pit. They are planning to make the area into a recreational lake after mining operations are completed by Lake County Grading.

The Lake County Grading Company, which took over the mining operation in 1983, discovered buried drums during grading operations. Later that year, approximately 500 drums of solvents and 1,000 paint cans, along with contaminated soils were removed by a clean-up contractor for the LCFPD.

The Petersen Sand and Gravel Site was placed on the NPL on October 15, 1984.

In 1985, IEPA and U.S. EPA signed a cooperative agreement for the IEPA to perform a Remedial Investigation/ Feasibility Study (RI/FS) at the site.

In January 1986, Planning Research Corporation (PRC) began RI/FS work under contract with IEPA. Field investigations by the IEPA and U.S. EPA took place between October 1986 and December 1987. A final RI Report was completed in April 1988. The RI studied the surface soils, soil borings, groundwater, surface water and sediments. Sample analyses showed that the previous removal actions removed all contamination to minimus levels. Since the RI indicated that the

site no longer posed a threat to public health and the environment, the EPA concluded that an FS was not necessary.

On September 14, 1988, Region V approved a Record of Decision (ROD) which selected the No Further Action remedy for the site. The selected remedy does not require any additional monitoring of the site. The Illinois Environmental Protection Agency (IEPA), concurred with the ROD on August 4, 1988. IEPA has also concurred with the EPA's intent to delete the site from the NPL.

The IEPA's community relations staff conducted an active campaign to ensure that the residents and local officials were well informed about the activities at the site. Community relations activities included public meetings, press releases, progress fact sheets, and establishing and maintaining an information repository. These activities were ongoing from the inception of the RI to the signing of the ROD. The selected remedy of No Further Action was presented in the June 1988 Proposed Plan and the June 21, 1988 public meeting. The public reaction to the selected remedy has been positive. U.S. EPA plans to continue community relations activities throughout the deletion process.

EPA, in consultation with the State of Illinois, has determined that all appropriate Fund-financed responses under CERCLA have been implemented at the Petersen Sand and Gravel Site and that no further cleanup is appropriate.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-22418 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (Department) intends to revise the type A natural resource damage assessment procedure for coastal and marine environments, codified at 43 CFR part 11, to conform with recent court rulings. The natural resource damage assessment regulations were developed pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). The Department promulgated two types of assessment regulations: Standard procedures for simplified assessments requiring minimal field observations (type A procedures); and procedures for detailed assessments in individual cases (type B procedures).

In an earlier **Federal Register** Notice, the Department announced its intent to begin the biennial review of the type A procedure for coastal and marine environments. The Department is now requesting additional public comments and technical information that may assist the Department in complying with the issues remanded to the Department by the court, specifically, the incorporation of restoration or replacement values and the inclusion of all reliably calculated lost use values, with no required hierarchy of methodologies for conducting those valuations. This notice deals solely with the type A rule for coastal and marine environments pursuant to the issues remanded by the court. The Department's actions on the type B rule and the type A rule for Great Lakes environments are the subjects of separate notices in today's **Federal Register.**

DATE: Comments will be accepted through October 23, 1989.

ADDRESS: Office of Environmental Project Review, *Attn: NRDA Coastal and Marine Type A Rule,* Room 2340, Department of the Interior, 1801 C Street, NW., Washington, DC 20240 (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington at (202) 343-1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under section 107(f) of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1321(f) (4) and (5) (also known as the Federal Water Pollution Control Act). Indian tribes may commence an action as natural resource trustees under section 126(d) of CERCLA. The damages that may be sought by natural resource trustees are for the inury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 107 also requires that all sums recovered as damages must be used only to restore, replace, or acquire the equivalent of such natural resources.

Section 301(c) of CERCLA requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and Section 311(f) (4) and (5) of the CWA. Section 301(c) calls for the natural resource damage assessment regulations in the following terms:

> (2) Such regulations shall specify: (A) Standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.
>
> (3) Such regulations shall be reviewed and revised as appropriate every two years.

Pursuant to its delegated responsibilities under CERCLA, the Department has promulgated various final rules for the assessment of damages for injuries to natural resources in the following rulemakings: (1) August 1, 1986 (51 FR 27674), type B procedures and general administrative process for conducting natural resource damage assessments; (2) March 20, 1987 (52 FR 9042), type A procedures for coastal and marine environments; (3) February 22, 1988 (53 FR 5166), amendments to 43 CFR part 11 to conform with amendments to CERCLA brought about by SARA; and (4) March 25, 1988, technical corrections to a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) incorporated by reference in the type A procedure for coastal and marine environments (53 FR 9769). These rules together comprise the natural resource damage assessment regulations, codified at 43 CFR part 11.

As part of its continuing responsibility for the rules, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) on February 1,

1989 (54 FR 5093), announcing its intent to begin the first biennial review of the type A procedure for coastal and marine environments. The type A procedure incorporates the use of a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME). A detailed explanation of the NRDAM/CME and its data bases is provided in the technical report "Measuring Damages to Coastal and Marine Natural Resources: Concepts and Data Relevant to CERCLA Type A Damage Assessments," Volumes I and II (referred to as the NRDAM/CME technical document), which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; PB87-142485; ph: (703) 487-4650. Additional discussion of the NRDAM/CME, as well as its applications and limitations, has been given in the preamble to the final type A rule published at 52 FR 9042 (March 20, 1987).

The NRDAM/CME consists of interactive physical fates, biological effects, and economic damages submodels. The interaction of the physical fates and biological effects submodels determines injury. The NRDAM/CME determines injury as a result of: (1) Direct mortality to adult, juvenile, and larval biota due to toxic concentrations of the spilled substance; and (2) indirect mortality to adult, juvenile, and larval biota due to a loss of foodstuff from the food web. The biological data base within the NRDAM/CME provides data on the biological populations within the ecological system of the NRDAM/CME study are. The submodel calculates losses to biological populations through the period of resource recoverability.

The economic damages submodel calculates dollar amounts for compensation for injuries based on direct use values. An economic data base is contained in the NRDAM/CME that uses market and nonmarket prices for the services provided by the natural resources. Damages are calculated in the NRDAM/CME for losses resulting from direct and indirect mortality to biota. The NRDAM/CME also calculates damages due to the closure of a fishing area, hunting area, or public beach due to the discharge or release. The extent of an area subject to closure is a data input made by the user of the NRDAM/CME, based upon the actual area closed due to the discharge or release.

Section 113 of CERCLA provides that any interested person may apply to the United States Court of Appeals for the District of Columbia Circuit for review of any regulation promulgated under the Act. Several parties filed petitions for review of the type A rule. In *Colorado* v. *Department of the Interior*, No. 87-1265 (D.C. Cir. decided July 14, 1989), the court rejected one challenge to the type A rule and remanded a second provision to the Department for revision. In the issue remanded to the Department, the court upheld the use of an interactive computer model, but stated that such a model should incorporate restoration or replacement costs and all reliably calculated lost use values in the damage calculations. The purpose of this Notice is to announce the Department's plans to develop the type A procedure for coastal and marine environments in a way that complies with the court's ruling and to request pertinent technical information and data for the coastal and marine environments that may assist the Department in its work.

II. Discussion

The Department's Advance Notice of Proposed Rulemaking (54 FR 5093) issued February 1, 1989, stated its intent to begin the first biennial review of the type A procedure for coastal and marine environments. Although this Notice does not respond to those comments, the focus of the comments is pertinent. A total of fifteen comments on that Notice were received. Comments generally addressed the technical operations performed by the NRDAM/CME. Several commenters suggested ways which they felt would improve the ease of using the model. Most technical comments to the model focused on the various numerical parameters employed in the algorithms of the physical fates, biological effects, and economic damages submodels and certain numerical data contained in the chemical, biological, and economic data bases. Several commenters identified potential computer "bugs" which they felt might warrant evaluation during the biennial review. Commenters responding to the first ANPRM need not repeat those earlier comments when responding to this Notice.

As described above, the NRDAM/CME, as first developed, calculated dollar amounts for compensation for injury based on direct use values of the services provided by the resource. The Department intends to proceed in the development of the type A procedure for coastal and marine environments by incorporating, to the extent technically feasible, appropriate restoration or replacement costs and indirect use values into the calculations performed by the NRDAM/CME. The Department is also mindful that the type A procedure developed must reflect "best available" information and is, therefore, requesting receipt of pertinent information and data that may be available to assist in this endeavour.

The Department is interested in receiving available data and information on restoration or replacement actions and the associated costs of those actions that may have been taken as a result of injuries to natural resources in coastal and marine environments or other comparable situations. The Department is especially interested in those restoration or replacement actions and costs that have occurred following discharges of oil or releases of hazardous substances, although other types of relevant experiences would also be desirable. Replacement cost tables such as those currently used for fish and wildlife species replacement in coastal and marine environments are also of interest to the Department. Such information may be of assistance to the Department in including appropriate restoration or replacement costs in the NRDAM/CME.

Related kinds of information and data that might be useful to the Department would pertain to mitigation actions taken in response to environmental impacts resulting from, for example, development activities and pollution controls in coastal and marine environments. Wetland mitigation actions and their associated costs further exemplify the types of mitigation information and data that might help.

In addition, the Department wishes to receive relevant, available information and data pertaining to indirect use values for natural resources of the coastal and marine environments. Such information could include, for example, studies or surveys of option and existence values for aquatic species of fish and wildlife of coastal and marine environments. The Department would like to evaluate such information as may be available in its consideration of all reliably calculated lost use values in the damage calculations to include in the type A procedure for coastal and marine environments.

III. Conclusion

The purpose of this ANPRM is to request comment and technical data to assist the Department in the biennial review of the type A rule for coastal and marine environments by incorporating restoration or replacement values and including all reliably calculated lost use values. The kinds of information of particular interest to the Department are those that represent restoration or replacement costs and indirect use values. Specific information and data

sought include: (1) The types and costs of restoration actions in coastal and marine environments; (2) replacement cost tables for fish and wildlife species; (3) coastal and marine mitigation actions and associated costs; and (4) option and existence values for the natural resources of the coastal and marine environments.

Dated: September 18, 1989.

Jonathan P. Deason,

Director Office of Environmental Project Review.

[FR Doc. 89-22384 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-RG-M

43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (Department) intends to make modifications to its ongoing efforts to develop a type A natural resource damage assessment procedure for Great Lakes environments. The modifications under consideration are to conform with recent court rulings. The natural resource damage assessment regulations were developed by the Department pursuant to section 301(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA). Two types of assessment regulations have been codified at 43 CFR part 11: Standard procedures for simplified assessments requiring minimal field observations (type A procedures for coastal and marine environments); and procedures for detailed assessments in individual cases (type B procedures). The type A procedure for Great Lakes environments is being developed consistent in concept to that of the type A procedure for coastal and marine environments.

In an earlier **Federal Register** Notice, the Department announced its intent to develop a type A procedure for Great Lakes environments and requested technical information and data that might assist in that effort. The Department is now requesting additional public comments and technical information that may assist the Department in complying with the issues remanded to the Department by the court, specifically, the incorporation of restoration or replacement values and the inclusion of all reliably calculated lost use values, with no required hierarchy of methodologies for conducting those valuations. This notice deals solely with the development of the type A rule for Great Lakes environments pursuant to the issues remanded by the court in the type A rule for coastal and marine environments. The Department's actions on the type B rule and the type A rule for coastal and marine environments are the subjects of separate notices in today's **Federal Register.**

DATE: Comments will be accepted through December 23, 1989.

ADDRESS: Office of Environmental Project Review, Attn: NRDA Great Lakes Type A Rule, Room 2340, Department of the Interior, 1801 C Street, NW., Washington, DC 20240 (Regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: David Rosenberger or Linda Burlington at (202) 343-1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, provides that, in addition to cost-recovery for response and cleanup actions, natural resources trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under section 107(f) of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1321(f) (4) and (5) (also known as the Federal Water Pollution Control Act). Indian tribes may commence an action as natural resource trustees under section 126(d) of CERCLA. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 107 also requires that all sums recovered as damages must be used only to restore, replace, or acquire the equivalent of such natural resources.

Section 301(c) of CERCLA requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance for the purposes of CERCLA and section 311(f)(4) and (5) of the CWA. Section 301(c) calls for the natural resource damage assessment regulations in the following terms:

> (2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

Executive Order 12316 of August 14, 1981, replaced by Executive Order 12580 of January 23, 1987, delegated the responsibilities contained in Section 301(c) to the Secretary of the Interior. Pursuant to its delegated responsibilities under CERCLA, the Department has promulgated various final rules for the assessment of damages for injuries to natural resources in the following rulemakings: (1) August 1, 1986 (51 FR 27674), type B procedures and general administrative process for conducting natural resource damage assessments; (2) March 20, 1987 (52 FR 9042), type A procedures for coastal and marine environments; (3) February 22, 1988 (53 FR 5166), amendments to 43 CFR part 11 to conform with amendments to CERCLA brought about by SARA; and (4) March 25, 1988, technical corrections to a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME) incorporated by reference in the type A procedure for coastal and marine environments (53 FR 9769). These rules together comprise the natural resource damage assessment regulations, codified at 43 CFR part 11.

As part of its continuing responsibility for the natural resource damage assessement regulations, the Department issued an Advance Notice of Proposed Rulemaking (ANPRM) on June 2, 1989 (53 FR 20143), announcing its intent to begin the development of a type A assessment procedure for the Great Lakes environments. That Notice explained that the Great Lakes types A procedure would be developed consistent in concept with that of the type A procedure for coastal and marine environments that provides for the use of the NRDAM/CME. The type A procedure for the Great Lakes environment is also being developed to use a computer model to perform the numerous mathematical computations that determine the physical fate, biological effects, and monetary damages from discharges of oil and releases of hazardous substances. That model is to be called the Natural

Resource Damage Assessment Model for Great Lakes Environments (NRDAM/GLE). The work on the NRDAM/GLE is well underway. The technical construction of the NRDAM/GLE, including the compilation of its data bases and computer coding, is an outgrowth of the NRDAM/CME.

Section 113 of CERCLA provides that any interested person may apply to the United States Court of Appeals for the District of Columbia Circuit for review of any regulation promulgated under the Act. Several parties filed petitions for review of the type A rule. *In Colorado versus Department of the Interior,* No. 87-1265 (D.C. Cir. decided July 14, 1989), the court rejected one challenge to the type A rule and remanded a second provision to the Department for revision. In the issue remanded to the Department, the court upheld the use of an interactive computer model, but stated that such a model should incorporate restoration or replacement costs and all reliable calculated lost use values in the damage calculations. The purpose of this Notice is to announce the Department's plans to develop the type A procedure for Great Lakes environments in a way that complies with the court's ruling and to request pertinent technical information and data for the Great Lakes environments that may assist the Department in its work.

II. Discussion

The Department's Advance Notice of Proposed Rulemaking (53 FR 20143) issued June 2, 1988, stated its intent to begin the development of a type A procedure for the Great Lakes environments. The NRDAM/GLE, as was being developed along the line of the existing NRDAM/CME, calculated dollar amounts for compensation for injury based on the direct use values of the services provided by the resource. The Department intends to proceed in the development of the type A procedure for Great Lakes environments by incorporating, to the extent technically feasible, appropriate restoration or replacement costs and indirect use values into the caluclations performed by the NRDAM/GLE. The Department is also mindful that the type A procedure developed must reflect "best available" information and is, therefore, requesting receipt of pertinent information and data that may be available to assist in this endeavour.

The Department is interested in receiving available data and information on restoration or replacement actions and the associated costs of those actions that may have been taken as a result of injuries to natural resources in Great Lakes environments or other comparable situations. The Department is especially interested in those restoration or replacement actions and costs that have occurred following discharges of oil or release of hazardous substances, although other types of relevant experience would also be desirable. Replacement cost tables such as those currently used for fish and wildlife species replacement in Great Lakes environments are also of interest to the Department. Such information may be of assistance to the Department in including appropriate restoration or replacement costs in the NRDAM/GLE.

Related kinds of information and data that might be useful to the Department would pertain to mitigation actions taken in reponse to environmental impacts resulting from, for example, development activities and pollution controls in Great Lakes environments. Wetland mitigation actions and their associated costs further exemplify the types of mitigation information and data that might help.

In addition, the Department wishes to receive relevant, available information and data pertaining to indirect use values for natural resources of the Great Lakes environments. Such information could include, for example, studies or surveys of option and existence values for aquatic species of fish and wildlife of Great Lakes environments. The Department would like to evaluate such information as may be available in its consideration of all reliably calculated lost use values in the damage calculations to include in the type A procedure for the Great Lakes environment.

III. Conclusion

The purpose of this ANPRM is to request comment and technical data to assist the Department in developing the type A rule for Great Lakes environments by incorporating restoration or replacement values and including all reliably calculated lost use values. The kinds of information or particular interest to the Department are those that represent restoration or replacement costs and indirect use values. Specific information and data sought include: (1) The types and costs of restoration actions in Great Lakes environments; (2) replacement cost tables for fish and wildlife species; (3) Great Lakes mitigation actions and associated costs; (4) option and existence values for the natural resources of the Great Lakes environments.

Dated: September 18, 1989.

Jonathan P. Deason,

Director, Office of Environmental Project Review.

[FR Doc. 89-22382 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-RG-M

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43 CFR Part 11

Natural Resource Damage Assessments

AGENCY: Department of the Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Department of the Interior (the Department) is beginning the revision of the natural resource damage assessment regulations, codified at 43 CFR part 11, to conform with a recent court ruling on the regulations. In that ruling, the court held that: (1) restoration or replacement costs are the basic measure of natural resource damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA); and (2) all reliably calculated lost use values of injured natural resources should also be recoverable, with no required hierarchy of methodologies for conducting those valuations.

The natural resource damage assessment regulations were developed pursuant to section 301(c) of CERCLA. The Department promulgated two types of assessment regulations: Standard procedures for simplified assessments requiring minimal field observation (type A procedures); and procedures for detailed assessments in individual cases (type B procedures). The type A rule and the type B rule were challenged in two separate, but parallel, cases. The Department is now seeking comments that will assist in revising the type B rule to comply with the court's decision. These revisions will ensure that the type B rule carries out the purpose and requirement of CERCLA for the restoration, or replacement, of injured natural resources. The revisions must also meet the requirement that the type B rule contain the "best available" procedures for performing damage assessments. This notice deals solely with the issues remanded by the court in the type B rule. Today's **Federal Register** also contains separate notices on the Department's proposed action on the existing type A rule for coastal and marine environments and modifications to the ongoing development of a new type A rule for the Great Lakes environments.

DATE: Comments will be accepted through October 23, 1989.

ADDRESS: Office of Environmental Project Review, ATTN: Type B NRDA Rule, Room 2340, Department of the Interior, 1801 C Street, NW., Washington, DC 20240 (regular business hours 7:45 a.m. to 4:15 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Linda Burlington or David Rosenberger at (202) 343-1301.

SUPPLEMENTARY INFORMATION:

I. Background

Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, provides that, in addition to cost-recovery for response and cleanup actions, natural resource trustees may recover damages for injury to natural resources, including the reasonable costs of assessing such injury, plus any prejudgment interest. Federal and State natural resource trustees may bring an action for damages under section 107(f) of CERCLA and section 311(f) (4) and (5) of the Clean Water Act (CWA), 33 U.S.C. 1321(f) (4) and (5) (also known as the Federal Water Pollution Control Act). Indian tribes may commence an action as natural resource trustees under section 126(d) of CERCLA. The damages that may be sought by natural resource trustees are for the injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 107 also requires that all sums recovered as damages must be used only to restore, replace, or acquire the equivalent of such natural resources.

Section 301(c) of CERCLA requires the promulgation of regulations for the assessment of damages for injury to, destruction of, or loss of natural resources resulting from a discharge of oil or a release of a hazardous substance. Section 301(c) calls for the natural resource damage assessment regulations in the following terms:

> (2) Such regulations shall specify: (A) standard procedures for simplified assessments requiring minimal field observation, including establishing measures of damages based on units of discharge or release or units of affected area, and (B) alternative protocols for conducting assessments in individual cases to determine the type and extent of short- and long-term injury, destruction, or loss. Such regulations shall identify the best available procedures to determine such damages, including both direct and indirect injury, destruction, or loss and shall take into consideration factors, including, but not limited to, replacement value, use value, and ability of the ecosystem or resource to recover.

The Department, pursuant to its delegated responsibilities under CERCLA, has promulgated various final rules for the assessment of damages for injuries to natural resources in the following rulemakings: (1) August 1, 1986 (51 FR 27674), "type B" procedures, the general process for conducting natural resource damage assessments, and the alternative methodologies for conducting assessments in individual cases; (2) March 20, 1987 (52 FR 9042), "type A" procedures, the standard procedure for simplified assessments in coastal and marine environments, using a computer model called the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME); (3) February 22, 1988 (53 FR 5166), to amend 43 CFR part 11 to conform with amendments to CERCLA; (4) March 25, 1988 (52 FR 9769), technical corrections to the NRDAM/CME; and (5) November 16, 1987 (52 FR 43763), a notice announcing the availability of five final type B technical information documents, prepared in conjunction with the type B procedures. These rules together, codified at 43 CFR part 11, comprise the natural resource damage assessment regulations called for by section 301(c) of CERCLA.

Section 113 of CERCLA provides that any member of the public may petition the Court of Appeals for the District of Columbia Circuit to review any regulation promulgated under CERCLA. A number of parties filed such petitions for the court review of the type B rule. On July 14, 1989, a three-member panel of the United States Court of Appeals for the District of Columbia Circuit, in *State of Ohio* v. *United States Department of the Interior*, No. 86-1529 (D.C. Cir.), unanimously upheld in part and invalidated in part certain aspects of the type B rule. This notice deals only with the three issues remanded to the Department in that decision affecting the type B rule.

II. Discussion

Issues Remanded for Revision

Basic Measure of Damages

The Department's type B rule required that the trustee conduct an assessment with the basic measure of damages for natural resource injuries being calculated using either restoration (or replacement) costs or lost use value of the resources, whichever was estimated to be the lesser amount. The court stated that the law indicates a distinct preference for using restoration cost as the measure of damages, although the court acknowledged the role of the Department to determine under what conditions the use of restoration costs as the measure of damages might not be feasible or appropriate. In considering how to revise the rule so that the primary measure of damages is restoration costs, the Department is seeking public comment on what possible conditions in various stages of an assessment might trigger the measurement of monetary damages by means other than restoration costs.

The provisions for calculating restoration costs are already set out in the type B rule. The rule requires the trustee to quantify the effects of the injury to the natural resources in terms of lost or disrupted services. The trustee then determines alternative management actions that would restore those lost or disrupted services in a cost-effective manner. Any specific methodology that accomplishes this goal is acceptable. In addition, the rule already allows the natural resource trustee to claim damages for loss or lessening of use values over the time required to accomplish the restoration.

The court ruling indicates that there may be times when restoration costs will not be the appropriate measure of damages because restoration is not technically feasible or restoration costs would be grossly disproportionate to the use value of the injured resource. The Department is proposing to further clarify or define the term "technical feasibility." The term is currently defined in the type B rule to mean that "the technology and management skills necessary to implement an Assessment Plan or Restoration Methodology Plan are well known and that each element of the plan has a reasonable chance of successful completion in an acceptable period of time." The Department is seeking public comment on whether to state criteria in the rule and, if so, what criteria might be used to determine whether restoration is "technically feasible." Should the trustee be allowed to use professional judgment to make the determination on a case-by-case basis, to take into account the particulars of each situation, showing a brief justification for his choice in his Report of Assessment, or should the existing definition be revised to set out specific criteria to use in making this determination?

The court's decision does not define the term "grossly disproportionate." The Department is seeking public comment on whether to further define the term within the rule, and if so how to define it. The Department seeks suggestions for definitions or parameters for trustees to consider in making this determination.

The guidance will need to be definitive enough to meet a "reasonableness" standard, yet flexible enough to avoid precluding valid claims for restoration costs. By way of example, the court suggested that if restoration costs exceeded three times the amount of a resource's use values, that might reasonably be considered grossly disproportionate. The question for the Department is whether to provide guidance for applying the term appropriately or simply to allow the trustee to use his best professional judgment to make the determination on a case-by-case basis.

Economic Valuations

The other issue upon which the type B rule was remanded to the Department for revision is the prescribed ranking, or hierarchy, of economic valuation methodologies, and the associated limitation on the use of option and existence values only to those situations where no direct uses could be found. The court stated that the rule should not require the use of one methodology over another, but rather that all reliably calculated lost use values, including option and existence values, of the resource should be recoverable. The trustee should be able to measure lost use values for natural resources by using any of the economic valuation methodologies available, and summing all reliably calculated lost use values (so long as the trustee does not double count).

The type B rule as written already provides a listing of reliable economic methodologies to calculate lost use values. The court upheld the methodologies list in the rule, but simply said that the rule could not require the use of one methodology over another. Thus the list of valid valuation methodologies stands as presented, but new instructions to the trustee will allow for greater flexibility in the choice of a methodology. The Department is seeking public comment on how much guidance to include in the rule and on possible selection criteria to make available to the trustee in selecting the most appropriate methodology. The Department seeks comment on the need for additional clarification or guidance based on information now contained in the technical document that was developed in conjunction with the type B rule (Type B Technical Information Document: Techniques to Measure Damages to Natural Resources, U.S. Department of the Interior, Washington, DC; June 1987). Others' experience may have produced selection criteria for a trustee to use in considering which methodology represents the "best available" methodology for a particular circumstance or condition.

The type B rule categorized various uses to be valued for an injured resource as "use" and "option and existence" values, and stated that there could be recovery for option and existence values only where the trustee could not determine a use value for a resource. The court held that although option and existence values may represent the passive use of a resource, they ought to be included in a damage assessment. The Department is seeking public comment on the ways of classifying resource uses and how to aid the trustee to avoid double counting. At the time the rule was developed our research found no universally accepted classification of natural resource use values, e.g., use vs. nonuse, direct vs. indirect, consumptive vs. nonconsumptive. We are seeking information on experience with cataloging the various possible "uses" of a resource in a form that can be easily understood, to assist trustees in their consideration of possible lost uses for the injured resource for the purposes of the damage assessment. Some classification of the various types of uses of natural resources might be appropriate as an aid to avoid double counting (expressly prohibited by CERCLA).

Issue Upheld, But Remanded for Clarification

On one issue, the court upheld the rule, but asked the Department to clarify the issue of public resources. The court construed CERCLA, primarily the definition of natural resources, and its legislative history to mean that purely private resources are excluded from the natural resource damage provisions. But, the court understood the Department's oral argument to suggest that a substantial degree of government regulation, management, or other form of control over natural resources could be sufficient to make the natural resource damage provisions apply to such resources in certain circumstances. The court asked the Department for a clarification of its rule insofar as it might extend to lands not owned by a government entity. The Department is seeking public comment on the degree of management, regulation, control, or property interest that might be considered necessary to make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources.

III. Conclusion

The Department has started the work needed to revise the type B rule to comply with the court's decision. These revisions will ensure that the type B rule carries out the purpose and requirement of CERCLA of the restoration, or replacement, of injured natural resources. The revisions must also meet the requirement that the type B rule contain the "best available" procedures for performing damage assessments. The Department is seeking comments on ways to best address the issues raised by the court. Responses to the following kinds of questions might assist us to carry out that purpose: (1) What are the possible considerations that might trigger the use of a measure of damages other than restoration costs in various stages of an assessment?; (2) whether to state criteria in the rule and, if so, what criteria might be used to determine whether restoration is "technically feasible?"; (3) whether or not to define the term "grossly disproportionate" within the rule and, if so, how to define it?; (4) how much guidance to include in the rule and what possible selection criteria to make available to the trustee on how to select the most appropriate methodology to determine lost use values?; (5) what available systems for classifying resource uses exist, as to use and nonuse, etc., which would also aid the trustee to avoid double counting?; and (6) what degree and type of such things as management, regulation, control, or property interest might make natural resources subject to the provisions of CERCLA for the purposes of enabling public trustees to recover damages for injuries to such resources.

Dated: September 18, 1989.

Jonathan P. Deason,

Director, Office of Environmental Project Review.

[FR Doc. 89-22383 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-RG-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Part 1302

RIN 0980-AA17

Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), Department of Health and Human Services (DHHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: This Notice of Proposed Rulemaking (NPRM) requests comments from the public on a proposed change in the Head Start regulation governing criteria for selection among applicants for a Head Start program. We are proposing to revise 45 CFR part 1302.10 in order to expand the scope of several current criteria and add new criteria. The proposed new criteria focus on the need for Head Start services within the community, the appropriateness of the proposed program design, and the adherence to Head Start Performance Standards and policies.

Criteria retained from current regulations are the qualifications and experience of the applicant agency and staff and the cost effectiveness of the proposed program. This regulatory change is needed in order to add important new selection criteria and to broaden some existing specific criteria which continue to have relevance.

DATE: In order to be considered, comments on this proposed rule must be received on or before November 21, 1989.

ADDRESS: Please address written comments to: Associate Commissioner, Head Start Bureau/ACYR, Post Office Box 1182, Washington, DC 20013.

It would be helpful if agencies and organizations would submit their comments in duplicate. Beginning December 5, 1989, comments will be available for public inspection in Room 2215, 330 C Street, SW., Washington, DC 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Dr. Maiso Bryant (202) 245–0549.

SUPPLEMENTARY INFORMATION:

I. Program Purpose

Head Start as authorized under the Head Start ACT (the Act), section 635 of Public Law 97–35, the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 9831 et seq.) is a national program providing comprehensive child development services. The services are provided primarily to low-income preschool children, age three to the age of compulsory school attendance, and their families. To help enrolled children to achieve their full potential, Head Start programs provide comprehensive health, nutrition, educational, social and other services. Additionally, Head Start programs are required to provide for the direct participation of parents of enrolled children in the development, conduct, and directioin of local programs. Head Start currently serves 452,314 children through a network of 1,300 grantees and 620 delegate agencies that have approved written agreements with specific grantees to operate Head Start programs.

While Head Start is targeted primarily at children whose families have incomes at or below the poverty line or are eligible for public assistance, Head Start policy permits up to 10 percent of the Head Start children in local programs to be from families who do not meet these low income criteria. Also, the Head Start Act requires that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to be enrolled in the full range of Head Start services and activities in a setting with their non-handicapped peers and to receive needed special education and related services.

II. Purpose and Content of the NPRM

ACYF proposes to revise the existing regulation at 45 CFR 1302.10 governing the selection among applicants to operate a Head Start program with Federal financial assistance.

The proposed changes in this NPRM are intended to better accommodate a wider variety of competitive situations, such as selecting among applicants in different communities and among current and prospective grantees when funds are available to expand services or when there is a need to change service providers. It also adds new criteria and broadens existing criteria to specifically address the selection of new grantees.

The changes in this regulation are being proposed as a result of our experience in preparing the Federal Register announcement for the solicitation of applications for fiscal year 1985 expansion funds. Section 1302.10 excluded such important review criteria as the need for Head Start services in the community, the proposed program design, and the applicant's understanding of and capability to implement the Head Start Performance Standards. We now propose that these be included as new criteria.

On January 25, 1985, ACYF published in the Federal Register (50 FR 3698) Program Announcement No. 13.600–852, concerning the availability of financial assistance to establish or expand Head Start programs. The announcement used the selection criteria which we are proposing in this NPRM. The resulting FY 1985 expansion effort, using the modified criteria, provided clear and convincing evidence that applicants not only had a better understanding of the elements of an acceptable application but also the applications contained more precise and substantive information regarding program design, program operation, community needs and use of the Performance Standards. Further, that information formed the basis for making sound and fair decisions among applicants.

This NPRM proposes to revise the current criteria and add new criteria.

The proposed revised criteria for selection among applicants for a Head Start program are: (1) The cost effectiveness of the proposed program; (2) the qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant; (3) the quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards and program policies, including the opportunities provided for employment of target area residents and career development for para-professional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program; (4) the proposed program design and option, including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the program in accordance with program policies and regulations; and (5) the need for services in the community served by the applicant. An analysis of the proposed selection criteria in relation to the existing rule is provided for clarification and ease of understanding (see Figure 1).

Section by Section Discussion

We are proposing the following revisions in § 1302.10. This section, which currently consists of one paragraph, has been divided into two paragraphs. The new paragraph (a) contains a general statement of our intent to select those applicants that appear to have the best potential for operating an effective Head Start program. The language is essentially the same as that found in the current § 302.10. Paragraph (b) of the proposed rule contains the revised criteria.

Criterion (a) on cost-effectiveness, in the current regulation, is retained with minor changes in wording as proposed criterion (b)(1).

FIGURE 1.—ANALYSIS OF PROPOSED HEAD START GRANTEE SELECTION CRITERIA § 1302.10

Existing criteria	Proposed criteria	Remarks
The basis for making a selection among applicants for a Head Start program shall be the extent to which the application selected reasonably promises the most effective and responsible Head Start program of the approvable applications submitted in terms of:	a. The basis for selecting among applicants proposing to operate a Head Start program will be the extent to which the applicatiion selected reasonably promises the most effective Head Start program.	*Retained*—With minor word changes.
	b. The criteria for selection are:	
(a) the cost-effectiveness of the program proposed to be provided;	(1) the cost effectiveness of the proposed program;	*Retained*—With minor word changes.
(b) the qualifications and experience of the applicant in planning, organizing, and providing comprehensive child development services at the community level.	(2) the qualifications of staff and experience of the applicant in planning, organizing, and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant;	*Revision*—Reference to "administrative and fiscal capability" added which is a part of existing criterion (f).
(c) the provisions made for direct participation of parents in the planning, conduct, and administration of the program;	(3) the quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards and program policies, including the opportunities provided for employment of target area residents and career development for para-professional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;	*Revision*—This criterion is broadened to include "adherence to Performance Standards and program policies" and existing criterion (d).
(d) the opportunities provided for employment of target area residents and career development opportunities for para-professional and other staff.		*Revsion*—This criterion is addressed under proposed criterion (3) concerning the quality of the proposed program.
(e) The suitability of the facilities and equipment proposed to be utilized in carrying out the Head Start program.		*Revision*—This criterion is addressed under the proposed criterion (4) on program design and option.
(f) The administrative and fiscal capabilities of the applicant to administer all Head Start programs being carried out in the community.		*Revision*—Reference to "administrative and fiscal capability" is included in criterion (2) which deals with the qualifications of the applicant
	(4) the proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposed to implement the program in accordance with program policies and regulations; and.	*New criterion.*
	(5) the need for services in the community served by the applicant.	*New criterion.*

Current criterion (b) concerning the qualifications of the applicant is retained in proposed criterion (b)(2) with a specific reference to "administrative and fiscal capability" being added which is a part of the current criterion (f).

Current criterion (c) on direct participation of parents is retained in the proposed criterion (b)(3). However, the new criterion is broader and includes "adherence to Performance Standards and program policies."

Current criterion (d) on opportunities provided for employment of target area residents and career development opportunities for para-professional and other staff is addressed under proposed criterion (b)(3).

Current criterion (e) on suitability of the facilities and equipment is addressed under proposed criterion (b)(4).

Current criterion (f) concerning the applicant's administrative and fiscal capabilities is addressed under the proposed criterion (b)(2).

III. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules, defined in the order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Nothing in the rule is likely to create substantial costs. Therefore, the Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Ch. 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we propose an analysis describing the rule's impact on small entities. Small entities are defined by the Act to include small businesses, small non-profit organizations, and small governmental entities.

While this proposed rule would affect small entities, it is not substantial and in many instances the small entities may already meet some of the proposed requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Public Law 96-511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed and final rule. This proposed rule does not contain information collection requirements or increase Federal paperwork burden on the public or private sector. Thus, no submission to OMB is required. A copy of this NPRM is being sent to all Head Start grantees and delegate agencies.

For the reasons set forth in the Preamble, we propose to revise 45 CFR 1302.10 as follows:

PART 1302—POLICIES AND PROCEDURES FOR SELECTION, INITIAL FUNDING, AND REFUNDING OF HEAD START GRANTEES, AND FOR SELECTION OF REPLACEMENT GRANTEES

1. The authority citation for part 1302 reads as follows:

Authority: 42 U.S.C. 9831 et seq.

2. Section 1302.10 is revised as follows:

§ 1302.10 Selection among applicants.

(a) The basis for selection of applicants proposing to operate a Head Start program will be the extent to which the application selected reasonably promises the most effective Head Start program.

(b) The criteria for selection are:

(1) The cost effectiveness of the proposed program;

(2) The qualifications and experience of the applicant and the applicant's staff in planning, organizing and providing comprehensive child development services at the community level, including the administrative and fiscal capability of the applicant;

(3) The quality of the proposed program as indicated by adherence to or evidence of the intent and capability to adhere to Head Start Performance Standards and program policies, including the opportunities provided for employment of target area residents and career development for para-professional and other staff and provisions made for the direct participation of parents in the planning, conduct and administration of the program;

(4) The proposed program design and option including the suitability of facilities and equipment proposed to be used in carrying out the program, as it relates to community needs and as the applicant proposes to implement the program in accordance with program policies and regulations; and

(5) The need for Head Start services in the community served by the applicant.

List of Subjects in 45 CFR Part 1302

Administrative practice and procedure, Education of disadvantaged, Grant programs/social programs.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: July 3, 1989.

Mary Sheila Gall,

Assistant Secretary for Human Development Services.

Approved: August 4, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-22404 Filed 9-21-89; 8:45 am]

BILLING CODE 4130-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-389, RM-6821]

Radio Broadcasting Services; Abbeville, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Abbeville Broadcasting Service, Inc., licensee of Station KROF-FM, Channel 285A, Abbeville, Louisiana, proposing the substitution of Channel 286C3 for Channel 285A at Abbeville and the modification of the station's license to specify operation on the higher class channel. The proposal could provide the community's first wide coverage area FM service. Channel 286C3 can be allotted to Abbeville consistent with the Commission's minimum distance separation requirements at the station's current transmitter site. The coordinates are 30-00-40 and 92-07-21.

DATES: Comments must be filed on or before November 6, 1989, and reply comments on or before November 21, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Chalres L. Spencer, Esquire, Hebert & Spencer, Old Warden's House, 701 Laurel Street, Baton Rouge, LA 70802 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-389, adopted August 21, 1989, and released September 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22361 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-391, RM-6883]

Radio Broadcasting Services; Halfway, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a proposal to add Channel 226A to Halfway, Missouri, as that community's first FM broadcast service. The petition was filed by Melvin Pulley. The coordinates for Channel 226A are 37-40-34 and 93-15-20 which include a site restriction 6.7 kilometers north of the community.

DATES: Comments must be filed on or before November 13, 1989, and reply comments on or before November 28, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Melvin Pulley, KYOO Broadcasting Company, 304 E. Jackson, Bolivar, Missouri 65613.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No 89-391, adopted August 28, 1989, and released September 18, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22362 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-93; RM-5632]

Radio Broadcasting Services; Montour Falls, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

SUMMARY: The Commission dismisses the request of Twin Tiers Communications Corp to substitute Channel 258A for Channel 285A at Montour Falls, New York, and the modification of its license for Station WNGZ-FM accordingly based on petitioner's failure to respond to the Request for Supplemental Information. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 87-93, adopted August 22, 1989, and released Setember 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22363 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-390, RM-6762]

Radio Broadcasting Services; St. George, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Color Country Broadcasting Corporation proposing the allotment of Channel 240C to St. George, Utah, as that community's third local FM service. A site restriction of 29.6 kilometers (18.4 miles) south of the city is required. The coordinates are 36-50-50 and 113-29-28.

DATES: Comments must be filed on or before November 6, 1989, and reply comments on or before November 21, 1989.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Eugene T. Smith, Esquire, 715 G Street SE., Washington, DC 20003 (Counsel for petitioner). 54868 (Petitioner); and Larry G. Fuss, Consultant, Contemporary Communications, P.O. Box 4010, Opelika, AL 36803 (Consultant to petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 89-390, adopted August 21, 1989, and released September 15, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-22364 Filed 9-21-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 90899-9199]

RIN 0648-AC72

Groundfish of the Gulf of Alaska, Groundfish Fishery of the Bering Sea and Aleutian Islands Area; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule; corrections.

SUMMARY: This document corrects two errors of omission in the regulatory text of a proposed rule that would implement Amendment 13 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (BSAI) and Amendment 18 to the FMP for Groundfish of the Gulf of Alaska (GOA) that was published September 1, 1989 (54 FR 36333). These corrections are being made to the proposed rule in order to make the regulatory text concerning observer requirements coincide with

Amendments 13 and 18 to the BSAI and GOA FMPs, respectively.

DATE: Comments are invited until October 12, 1989.

FOR FURTHER INFORMATION CONTACT: Ronald J. Berg or Susan J. Salveson (Fishery Management Biologists, NMFS), 907–586–7230.

In proposed rule document 89–20445 beginning on page 36333 in the issue of September 1, 1989, make the following corrections:

PART 672—[CORRECTED]

§ 672.27 [Corrected]

1. On page 36360, in the first column, in § 672.27, first line of that paragraph, after the third word "vessels" insert "and processors".

PART 675—[CORRECTED]

§ 675.25 [Corrected]

1. On page 36363, in the third column, in the last paragraph on that page, in § 675.25, first line of that paragraph, after the third word "vessels" insert "and processors".

Dated: September 15, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

[FR Doc. 89–22341 Filed 9–21–89; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 54, No. 183
Friday, September 22, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

[Doc. No. 7408S]

Intent to Establish the Federal Crop Insurance Advisory Committee and Request for Nominations

The Federal Crop Insurance Corporation (FCIC) hereby serves notice to all interested parties that it intends to establish the Federal Crop Insurance Advisory Committee (Committee).

The Committee will provide a forum for discussion of a wide variety of issues concerning the development and promotion of crop insurance protection offered by FCIC.

Under the authority contained in the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) (the Act), FCIC offers crop insurance protection to agricultural producers through a dual delivery system; direct delivery to the insured through private insurance company contractors under an Agency Sales and Service Contract and by reinsuring crop insurance policies sold by private insurance companies reinsured by the FCIC under the provisions of a Reinsurance Agreement.

The function of the Committee will be to bring together parties affected by, or interested in, issues concerning marketing, actuarial determinations, and claims associated with the crop insurance program.

The Committee will discuss new technologies, the upgrading of product design, marketing strategies, processing systems procedures, education, and actuarial determinations.

The Committee will not exceed 25 members, including a limited number of Department of Agriculture employees, with the remainder representing the insurance and agricultural industries. The Committee will meet four (4) times yearly.

Applications for membership consideration are being solicited in advance by the FCIC and will be held pending the authorization to proceed with the formation of the Committee. Interested parties will be required to submit a background information Form AD-755 (OMB Approval No. 050-0001). Copies of an AD-755 may be secured by contacting the following individual: David W. Gabriel, Acting Deputy Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, 14th and Independence Avenue, SW.; Washington, DC 20250, Telephone (202) 447-6795.

The Department of Agriculture's programs are open to all individuals without regard to race, color, religion, sex, national origin, age, mental or physical handicap, or marital status.

Further, it is the Secretary of Agriculture's policy that membership on USDA Boards and committee's reflect, to the extent practicable, the diversity of individuals served by the programs.

Done in Washington, DC on September 1, 1989.

John Marshall,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-22390 Filed 9-21-89; 8:45 am]

BILLING CODE 3410-08-M

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

Meeting

AGENCY: Christopher Columbus Quincentenary Jubilee Commission.

ACTION: Notice of meeting.

SUMMARY: This notice announces a forthcoming meeting of the Christopher Columbus Quincentenary Jubilee Commission, a presidential commission established in 1984 (Pub. L. 98-375). The meeting will be held in Washington, DC and will be chaired by Commission Chairman John N. Goudie.

DATES: Thursday, September 28, from 9:00 a.m. to 12:30 p.m. (Open). Thursday, September 28, from 3:00 p.m. to 5:30 p.m. (Open). Friday, September 29, from 9:00 a.m. to 1:00 p.m. (Open).

ADDRESSES: On September 28, 1989 from 9:00 a.m. to 12:30 p.m., Loy Henderson Room, U.S. Department of State, 2201 C Street, NW. On September 28, 1989 from 3:00 p.m., Loy Henderson Room, U.S. Department of State, 2201 C Street, NW. On September 29, from 9:00 a.m. to 1:00 p.m., Department of Commerce, 14th Street and Constitution Avenue, Room 6808, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Francisco J. Martinez-Alvarez, Deputy Director (202) 632-1992.

SUPPLEMENTARY INFORMATION: The Commission will meet with representatives of foreign Commissions to discuss joint cooperative efforts. The Commission will also review proposals for endorsement submitted by interested individuals and organizations.

Francisco J. Martinez-Alvarez,

Deputy Director.

[FR Doc. 89-22471 Filed 9-21-89; 8:45 am]

BILLING CODE 6820-RB-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Atlantic Tuna Fisheries.

Form Number: None; OMB-0648-0168.

Type of Request: Request for reinstatement of a previously approved collection for which approval has expired.

Burden: 5 respondents; 1 reporting hour, 50 recordkeeping hours; average hours per response—.1 hour; average burden per recordkeeper—10 hours.

Needs and Uses: Tuna vessels which will fish for tuna in the regulatory area established by the International Commission for the Conservation of Atlantic Tunas must maintain logbooks and similar records. Vessels entering the area after having fished in the Pacific, or leaving the area for the Pacific, must provide advance notice. The information is needed to provide catch data to the Commission and to enforce regulations.

Affected Public: Businesses or other for-profit, small businesses or organizations.

Frequency: Recordkeeping, on occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Russell Scarato, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC. 20230. Written comments and recommendations for the proposed information collection should be sent to Russell Scarato, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–22405 Filed 9–21–89; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.
Title: February 1990 Education Attainment Supplement to the Current Population Survey.
Form Number: CPS–1.
Type of Request: New collection.
Burden: 475 hours.
Number of Responsdents: 57,000.
Avg Hours Per Response: 30 seconds.
Needs and Uses: The Educational Attainment Question is an addition to the February 1990 collection of the Current Population Survey (CPS). The new question asks respondents for levels of education attained. The question will be asked in addition to the current questions on years of education completed. This new supplemental question will be used by the Census Bureau to test the correlation between years completed and degrees received which is suspected to have been weakening in recent years.
Affected Public: Individuals or households.
Frequency: On occasion.
Respondent's Obligation: Voluntary.
OMB Desk Officer: Don Arbuckle 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1989.

Edwards Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–22370 Filed 9–21–89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census
Title: 1990 Decennial Census—Parolee/Probationer Coverage Improvement Program (PPCIP)
Form Number: D–59A, D–59B
Type of Request: New Collection
Burden: 65,000 hours
Number of Respondents: 1,300,000
Avg Hours Per Response: 3 minutes
Needs and Uses: The PPCIP is designed to enlist state governments to provide the Census Bureau with information on parolees and probationers under their jurisdiction so that the Census Bureau can ensure that they are included in the 1990 Decennial Census.
Affected Public: State or local governments
Frequency: One time only
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89–22371 Filed 9–21–89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census
Title: Annual Demographic Supplement to the Current Population Survey
Form Number: CPS–1, CPS–665
Agency Approval Number: 0607–0354
Type of Request: Reinstatement of a previously approved collection for which approval has expired
Burden: 24,000 hours
Number of Respondents: 60,000
Avg Hours per Response: 24 minutes
Needs and Uses: The Annual Demographic Supplement (ADS) collects data on work experience, personal and family income, poverty levels, population status, family relationships, marital status, and migration. Data gathered in the ADS is used by such agencies as the Bureau of Labor Statistics and the Department of Health and Human Services to determine the official Government poverty statistics and is the primary source of family income data.
Affected Public: Individuals or households
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle 395–7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377–3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR DOC. 89–22372 Filed 9–21–89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census
Title: Current Industrial Reports Program—Luggage and Personal Leather Goods
Form Number: MA31C
Type of Request: New Collection
Burden: 450 hours
Number of Respondents: 450
Avg Hours Per Response: 1 hour
Needs and Uses: This survey is designed to measure the output of U.S. manufacturers of luggage and personal leather goods. The survey is sponsored by the Luggage and Leather Goods Manufacturing Association. Government agencies use the data collected in the Current Industrial Reports (CIR) Program to analyze specific commodities and industries.
Affected Public: Businesses or other for-profit organizations
Frequency: Annually
Respondent's Obligation: Voluntary
OMB Desk Officer: Don Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: September 18, 1989.

Edward Michals,

Departmental Clearance Officer Office of Management and Organization.

[FR Doc. 89-22373 Filed 9-21-89; 8:45 am]

BILLING CODE 3510-07-M

Export Administration

[Docket No. 9103-01, 9103-02]

Ruben Sanchez, Individually and Doing Business as Oficina Tecnica Ruben Sanchez CA

Summary

Pursuant to the August 24, 1989, recommended Decision and Order of the Administrative Law Judge (ALJ), which Decision and Order is attached hereto and affirmed by me, Ruben Sanchez, individually and doing business as Oficina Tecnica Ruben Sanchez CA, 3ra. Calle Urbanizacion Montalban II, La Vega, Residencias Aurora, Local P.B. Caracas, Venezuela 1021 and all successors, assignees, officers, partners, representatives, agents and employees are hereby denied for a period of one year from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations (15 CFR parts 768 through 799). Commencing one year from this date the denial of export privileges set forth above shall be suspended, in accordance with § 788.16 of the Regulations, for one year, and shall be terminated at the end of such year, provided that respondents have committed no further violation of the Export Administration Act, the Regulations, or this Order. This action is further subject to the other conditions as enumerated in the Recommend Order of the ALJ.

Order

On August 24, 1989, the ALJ entered his Recommended Decision and Order in the above-referenced matter. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. Having examined the record and based on the facts in this case, I hereby affirm the Decision and Order of the ALJ.

This constitutes final agency action in this matter.

Dated: September 14, 1989.

Stanley Sienkiewicz,

Acting Under Secretary for Export Administration.

Appearance for Respondents: Ruben Sanchez (pro se), 3ra. Calle Urbanizacion Montalban II, La Vega, Residencias Aurora, Local P.B., Caracas, Venezuela 1021.

Appearance for Agency: G. Roderick Gillette, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

This proceeding against Respondent Ruben Sanchez, individually and doing business as Respondent Oficina Tecnica Ruben Sanchez CA, began with the issuance February 6, 1989 of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended ("the Act"), and the Export Administration Regulations ("the Regulations").[1]

The charging letter alleged that in August 1988 Respondent Ruben Sanchez, individually and doing business as Oficina Tecnica Intelectra CA, had violated §§ 787.3(a), 787.3(b), 787.5(a)(1)(ii), and 787.10 in connection with the attempted export of computer equipment from the United States to Venezuela. The parties subsequently stipulated that the name of the entity through which Respondent Ruben Sanchez does business is not that stated in the charging letter, but rather Oficina Tecnica Ruben Sanchez CA. Accordingly, the Respondents in this proceeding are Respondent Ruben Sanchez, individually and doing business as Respondent Oficina Tecnica Ruben Sanchez, CA.

Respondent answered the charging letter with a denial of its allegations. At a time in the proceeding when Respondents were in default, the Agency submitted for the record its evidence supporting the charges. Subsequently Respondents cured their procedural default, and the parties submitted a Consent Agreement. In the Consent Agreement, Respondent Sanchez admitted that he violated § 787.(b) of the Regulations, as alleged in the charging letter, and the Agency withdrew its charges that Respondents violated also three other sections. To settle the admitted violation of § 787.3(b), the parties agreed that a one-year denial of U.S. export privileges would be imposed on Respondents, and that this one-year denial would be suspended.

Discussion

The Agency's case focused on an attempted export from the United States on August 27, 1988 of computer equipment. The equipment was seized by the Agency several hours before it was to leave by air for Venezuela, because its shipping documents cited an export license that in fact covered the shipment of different computer equipment.

In connection with this attempted export, Respondent Sanchez admitted in the Consent Agreement that from about August 1 to August 27, 1988 he conspired

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Public Law 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368 through 399, were redesignated as 15 CFR parts 768 through 799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

with two others to export the equipment without the required export license, in violation of § 787.3(b) of the Regulations. In the Consent Agreement, the Agency withdrew the other three charges advanced by its charging letter. These charges were: attempting an unauthorized export, in violation of § 787.3(a); misrepresentations on shipping documents, in violation of § 787.5(a)(1)(ii); and unauthorized use of the export license for the different computer equipment, in violation of § 787.10.

Conclusion

The evidence introduced by the Agency is sufficient to show that Respondent Sanchez conspired with two others from about August 1 to August 27, 1988 to export computer equipment from the United States to Venezuela without the required export license. Accordingly, Respondent Sanchez is found to have violated § 787.3(b) of the Regulations, as alleged in the charging letter.

The Consent Agreement negotiated by the parties to settle this case is reasonable, and its terms are approved by the undersigned. These terms are implemented by the Order set forth below.

Order

I. For a period of one year from the date of the final Agency action, Respondent Ruben Sanchez, individually and doing business as Oficina Tecnica Ruben Sanchez CA, 3ra. Calle Urbanizacion Montalban II, La Vega, Residencias Aurora, Local P.B., Caracas, Venezuela 1021.

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing one year from the date of the final Agency action, the denial of export privileges set forth in Paragraph I above shall be suspended, in accordance with Section 788.16 of the Regulations, for one year, and shall be terminated at the end of such year, provided that Respondents have committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the one-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs II to VI of this Order shall also be suspended during such one-year period.

III. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which any Respondent is no or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which any Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final acton in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: August 24, 1989.

Thomas W. Hoya,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Purusant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 89-22398 Filed 9-21-89; 8:45 am]

BILLING CODE 3510-DT-M

[Docket No. 9101-01]

Action Affecting Export Privileges: Bernardus Johannes Jozef Smit

Summary

Pursuant to the August 16, 1989 Decision and Order of the Administrative Law Judge ("ALJ"), which Decision and Order is hereby affirmed in part and modified in part, Bernardus Johannes Jozef Smit, with an address of 12 Abbott Way, Piedmont, California 94618, is assessed a civil penalty of $20,000 and is denied for a period of fifteen (15) years from the date hereof, all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving

commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations ("Regulations").[1]

Respondent shall pay $10,000 of the above-referenced civil penalty pursuant to the payment schedule listed in the ALJ's Order, a copy of which is attached hereto and made a part of this Decision and Order. The remaining amount of the civil penalty shall be suspended, as authorized by § 788.16(c) of the Regulations, for two (2) years from the date of the final Agency action and shall be waived without further action at the end of such two-year period, provided that Respondent has not committed a further violation of the Act, Regulations, or the final Order entered in this proceeding during such two (2) years. Commencing ten (10) years from the date of the final Agency action, the denial of export privileges shall be suspended, as authorized by § 788.16(c) of the Regulations, for the remaining five (5) years of the fifteen-year period set forth above, and shall be terminated at the end of such fifteen-year period, provided that Respondent has committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding.

Background

On January 13, 1989, the Office of Export Enforcement, Bureau of Export Administration, U.S. Department of Commerce ("Agency") issued a charging letter against Respondent, Bernardus Johannes Jozef Smit, alleging multiple violations of the Export Administration Act of 1979, as amended (50 U.S.C.A. App. sections 2401–2420 (Supp. 1989) ("the Act")) and Regulations. Smit filed his Answer to Administrative Charges and Demand for a hearing on March 17, 1989, denying all charges alleged by the Agency. Pursuant to the ALJ's request, both the Agency and Respondent filed their Preliminary Positions on Issues and Procedures on April 19, 1989. At that time, Respondent requested a stay of the administrative proceedings noting the outstanding appeal to his criminal conviction and that the disposition of such appeal would have an important effect on some or all of the charges alleged in this administrative proceeding. Respondent also requested an opportunity to file an additional memorandum in the event that his request for stay was denied. The Agency did not oppose any of Respondent's requests.

One week later, the ALJ denied Respondent's request for a hearing and set forth a proposed schedule with the record closing for decision by June 23, 1989. See Order dated April 25, 1989. The ALJ did not address Respondent's request for a stay pending resolution of his criminal appeal. On May 25, 1989, the Agency filed its Submission on the Record and evidence supporting Smit's conviction in the U.S. District Court in Northern California. In lieu of filing a brief, testimony and exhibits, Respondent's counsel notified the ALJ on June 9, 1989 that she had reached a civil settlement with the Agency and requested a suspension of the briefing schedule to enable the filing of the consent agreement. At that time, Respondent requested an opportunity to file a submission in the event that the ALJ disapproved the consent agreement. The ALJ granted Respondent's request and suspended the briefing schedule. On July 20, 1989, the Agency submitted a Consent Agreement for consideration by the ALJ. The ALJ approved the Consent Agreement on August 16, 1989 finding it to be reasonable. In approving the consent agreement, the ALJ also found that the Respondent had committed various violations of the Act and Regulations, holding that the evidence of Respondent's criminal conviction was sufficient to sustain the allegations raised in the Agency's charging letter.

Discussion

On August 16, 1989, the ALJ found that the Consent Agreement that was negotiated between the Agency and Respondent was reasonable and approved its terms accordingly, implementing such terms in the accompanying Order. See Decision and Order, In the Matter of Bernardus Johannes Jozef Smit, August 16, 1989 at 4. This office concurs with the ALJ's finding with respect to the Consent Agreement and affirms the ALJ's Decision and Order with respect to this matter.

In his Decision, however, the ALJ also found that Respondent had committed various violations of the Act and Regulations, holding that "[t]he evidence of Respondent's criminal conviction is sufficient to sustain the allegations of the January 13, 1989 charging letter that Respondent violated the Regulations through those acts for which he was criminally convicted." *Id.* at 3. This office does not concur with this portion of the ALJ's Decision for the following reasons.

I. The ALJ's finding that Respondent committed the violations alleged in the charging letter conflicts with the terms set forth in the approved Consent Agreement.

It is uncontested that both the Agency and Respondent placed great weight in reaching the consent agreement on Respondent's not admitting either to the facts alleged in the charging letter or to a violation of the Regulations. See Initial Submission of Commerce at 3; Respondent's Reply at 2). In fact, one of the terms of the Consent Agreement provided that

> [t]he Department and Smit agree that this Consent Agreement is for settlement purposes only, and that notwithstanding Smits's convictions on the offenses underlying the Charging Letter (which convictions are presently on appeal), nothing herein constitutes an admission by Smit of the facts alleged in the Charging Letter.

Consent Agreement, Paragraph 7 at 5. According to Respondent, such an admission here could have dramatic import in the event a second criminal trial ensues as a result of his pending appeal or in additional proceedings he may face in connection with his license to practice law. *See* Reply at 3, n. 1.

While the ALJ's finding of violation does not explicitly modify the terms of the consent agreement, the finding would have the identical effect on other proceedings as respondent's admission of a violation. Thus, this finding directly conflicts with one of the terms and principal purposes of the consent agreement which was approved in all respects and thus, a finding of violation should not have appeared in the ALJ's Decision and Order.

II. Neither the Act nor the Regulations requires that a finding of violation be made in order to impose sanctions under a consent agreement.

A careful reading of the Act and Regulations reveals that a finding of violation need not be made in approving a consent agreement or in imposing the sanctions pursuant to such agreement.[2]

[1] Effective October 1, 1988, the Regulations have been redesignated as parts 768 through 799 of title 15 of the Code of Federal Regulations. 53 FR 37751 (September 28, 1988). The redesignation merely changed the first number of each part from "3" to "7". Until such time as the Code of Federal Regulations is republished, the Regulations can be found at 15 CFR parts 368 through 399 (1988).

[2] Prior decisions have ruled that a finding of violation would be necessary under certain circumstances in order to impose sanctions. *See In the Matter of Hon Kwan Yu, individually and doing business as Seed H.K. Ltd.*, 54 FR 11427 (Mar. 20, 1989); *In the Matter of Robert Behar*, 53 FR 48666 (Dec. 2, 1988). In *Hon Kwan Yu*, however, the ALJ made a finding of violation in a Default Decision and Order, not a consent agreement, properly applying § 788.8(a) (Default) and 788.16(b) (Decision and Order) of the Regulations. In a default proceeding, the agency must file evidence to support the allegations in the charging letter in order to succeed. See § 788.8(a). Consequently, the Regulations require the ALJ to issue a decision and

Continued

(a) The Act does not mandate that a finding of violation be made in order to impose sanctions pursuant to a consent agreement.

No finding of a violation is necessary to impose the sanctions agreed to in a consent agreement. While section 11(c)(1) of the Act states that "[t]he Secretary * * * may impose a civil penalty not to exceed $10,000 for each violation of this Act or any regulation, order or license issued under this Act * * *," this provision does not mandate a finding of violation where the Agency and Respondent have arrived at a consent agreement. The language in section 11(i)(2) provides as follows:

> Nothing in subsection (c)[above provision dealing with the imposition of sanctions for violations], (d), (f), (g) or (h) limits:
> * * * * *
> (2) the authority to compromise and settle administrative proceedings brought with respect to violations of this Act, or any regulation, order, or license issued under this Act * * *

Id.

Thus, when section 11(c)(1) is read in conjunction with section 11(i)(2), it is clear that Congress has not imposed a requirement that a finding of violation must be made before a sanction can be imposed pursuant to a consent agreement.

(b) The Regulations do not require that a finding of violation be made in order to impose sanctions pursuant to a consent agreement.

The Regulations even more clearly support the position that there need not be a finding of violation in order to impose sanctions pursuant to a consent agreement. Whereas § 788.16 of the Regulations (currently codified at 15 CFR 388.16) mandates the ALJ to include *recommended findings of fact, conclusions of law, and findings as to whether there has been a violation* in the Decision and Order after considering the entire record in the proceeding, § 788.17 (currently codified at 15 CFR 388.17), which deals exclusively with consent proceedings, merely mandates the ALJ to issue a *recommended order* upon approval of such consent agreement. Thus, unlike the mandate in § 788.16(b), there is no requirement to enter a finding of violation when approving a consent agreement pursuant to § 788.17 of the Regulations.[3]

In the present proceeding, § 788.17(a), not § 788.16(b) should control, since Respondent never had the opportunity to present his arguments, testimony and exhibits to support his earlier denial of all of the allegations. If all of the administrative safeguards had been afforded, and the ALJ had disapproved the consent agreement, the ALJ could properly have made a finding as to whether there had been a violation, consistent with the mandate found in § 788.16(b) of the regulations. That, however, was not the situation here. Rather, in the present proceeding, the ALJ approved the subject Consent Agreement, finding that it was reasonable as negotiated by the parties and thereby approved the terms accordingly. Therefore, consistent with § 788.17(a) of the regulations, the ALJ should have issued a recommended order approving the consent agreement without reaching the question of whether a violation had occurred.

For all of the above reasons, that portion of the ALJ's Decision and Order regarding the finding of violations will be modified accordingly.

Order

On August 16, 1989, the ALJ entered his recommended Decision and Order in the above referenced matter. That Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. In keeping with the Discussion and Findings above, I hereby modify the Recommended Decision and Order of the ALJ as follows:

The ALJ's Decision to affirm the Consent Agreement, as negotiated by the parties to settle this case, is hereby affirmed, striking that portion of the Decision and Order stating that the evidence of Respondent's criminal conviction is sufficient to sustain the allegations of the Agency Charging Letter and that Respondent Bernardus Johannes Jozef Smit has violated the Regulations through those acts for which he was criminally convicted.

This constitutes final agency action in this matter.

Dated: September 15, 1989.

Dennis E. Kloske,

Under Secretary for Export Administration.

Appearance for Respondent: William L. Osterhoudt, Esq., Ann C. Moorman, Esq., Jordan and Osterhoudt, 423 Washington Street, Third Floor, San Francisco, CA 94111.

Appearance for Agency: Louis K. Rothberg, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Avenue NW., Washington, DC 20230.

Preliminary Statement

This proceeding against Respondent Bernardus Johannes Jozef Smit began with the issuance January 13, 1989, of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. This letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended ("the Act"), and the Export Administration Regulations ("the Regulations").[1] The letter alleged that in 1983-84, Respondent had conspired to export commodities from the United States through Hong Kong to the Peoples Republic of China without the required US. licenses, had attempted to export a microcomputer from the United States to Hong Kong without the required U.S. license, and had made misrepresentations regarding U.S. exports.

Respondent answered the charging letter with a denial of its allegations, and the Agency submitted for the record its evidence supporting the charges. Before Respondent replied to this evidence, the parties submitted a Consent Agreement in which Respondent agreed to a $20,000 civil penalty and a fifteen-year denial period

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order containing findings of fact, conclusions of law, and findings as to whether there has been a violation. See § 788.16(b). In Behar, the Respondnet had admitted the facts alleged in the charging letter in his consent agreement, and the question arose as to whether an admission of fact constituted an admission of liability, a situation we clearly do not have here. To the extent that *Behar* or *Hon Kwan Yu* are inconsistent with the conclusion I reach here, I decline to follow those decisions.

[3] Section 788.17 provides guidance for consent proceedings that are conducted both before and after the service of a charging letter. A careful reading of this section shows that it is not appropriate to make a finding of violation in consent proceedings, no matter when the proceedings are conducted. For example, § 788.17(b) controls if a consent agreement is reached before the issuance of a charging letter, placing the responsibility for reviewing the consent agreement with the Assistant Secretary of Commerce for Export Enforcement (Assistant Secretary), not the ALJ. Even if the Assistant Secretary approves the consent agreement and issues an order, the Regulation requires no action by the ALJ. Consequently, no finding of violation is made in cases involving consent agreements reached prior to the Agency's issuance of a charging letter. Section 788.17(a), the controlling Section in the present proceeding, provides for review by the ALJ of consent agreements reached by the parties after the issuance of a charging letter. A careful reading of these provisions reveal that the drafters never could have intended to allow an ALJ to make a finding regarding violation based solely on the timing of the consent proceeding.

[1] The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Public Law 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Public Law 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR parts 368 through 399, were redesignated as 15 CFR parts 768-799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

in settlement of the charges. The Consent Agreement included provision for suspending $10,000 of the civil penalty and the last five years of the denial period.

Discussion

The Agency presented evidence that each of the three allegations contained in its charging letter was essentially the same as a count of a criminal indictment on which Respondent had been convicted in a U.S. district court in 1988. The first allegation charged that from about January 1, 1983 to March 31, 1984, Respondent conspired with one named individual and with others to export commodities from the United States through Hong Kong to the PRC without the required U.S. validated license, in violation of § 787.3(b) of the Regulations.

The second charge alleged that on or about February 28, 1984, Respondent attempted to export a microcomputer from the United States to Hong Kong without the required U.S. validated license, in violation of § 787.3(a) of the Regulations. The third charge alleged that on or about February 29, 1984, Respondent, when boarding a plane leaving the United States, made false or misleading statements to U.S. Customs agents regarding his baggage on that flight, in violation of § 787.5 of the Regulations.

Conclusion

The evidence of Respondent's criminal conviction is sufficient to sustain the allegations of the January 13, 1989, charging letter that Respondent violated the Regulations through those acts for which he was criminally convicted. *Spawr Optical Research, Inc.* v. *Baldrige,* 649 F. Supp. 1366 (D.D.C. 1986). Thus, Respondent is found, as alleged in the charging letter, to have violated: Section 787.3(b) of the Regulations in 1983–84 by conspiring to export commodities from the United States through Hong Kong to the PRC without the required validated license; § 787.3(a) in 1984 by attempting to export a microcomputer from the United States to Hong Kong without the required validated license; and § 787.5 in 1984 by making misrepresentations regarding U.S. exports.

The Consent Agreement negotiated by the parties to settle this case is reasonable, and its terms are approved by the undersigned. These terms are implemented by the Order set forth below.

Order

I. Respondent Bernardus Johannes Jozef Smit is assessed a civil penalty of $20,000, to be paid as follows: Within thirty days of the date of the final Agency action, $3,500 shall be paid; within 180 days of the date of the final Agency action, a second payment of $3,500 shall be made; and within twelve months of the date of the final Agency action, a third payment, of $3,000, shall be made. The remaining amount of the civil penalty—$10,000—shall be suspended, as authorized by § 788.16(c) of the Regulations, for two years from the date of the final Agency action, and shall be waived without further action at the end of such two-year period, provided that Respondent has during such two years committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding.

II. For a period of fifteen years from the date of the final Agency action, Respondent Bernardus Johannes Jozef Smit, 12 Abbott Way, Piedmont, California 94618, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

III. Commencing ten years from the date of the final Agency action, the denial of export privileges set forth in Paragraph II above shall be suspended, in accordance with § 788.16 of the Regulations, for the remaining five years of the fifteen-year period set forth in Paragraph II above, and shall be terminated at the end of such fifteen-year period, provided that Respondent has committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the five-year suspension period, Respondent may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs IV to VII of this Order shall also be suspended during such five-year period.

IV. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

VI. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with Respondent or any related person, or whereby Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or from Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VIII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this preceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: August 16, 1989.

Thomas W. Hoya,

Administrtive Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Attachment to Administrative Law Judge Order

Instruction for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of the Assistant General Counsel for Export Administration, Room H-3845, 14th Street and Constitution Avenue, NW., Washington, DC 20230, Attn: Pamela P. Breed, Esq.

[FR Doc. 89-22399 Filed 9-21-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[C-122-807]

Countervailing Duty Order: Fresh, Chilled, and Frozen Pork from Canada

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that exports of fresh, chilled, and frozen pork from Canada are receiving benefits which constitute subsidies within the meaning of the countervailing duty law. In a separate investigation, the U.S. International Trade Commission (ITC) determined that imports of fresh, chilled, and frozen pork from Canada threaten material injury to a U.S. industry. The ITC did not determine, pursuant to section 705(b)(4)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(b)(4)(B)), that but for the suspension of liquidation of entries of fresh, chilled, and frozen pork from Canada the domestic industry would have been materially injured.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 706(b)(2) [19 U.S.C. 1671e(b)(2)] applies. Therefore, all unliquidated entries or warehouse withdrawals, for consumption of fresh, chilled, and frozen pork from Canada made on or after September 13, 1989, the date on which the ITC published its final affirmative determination of threat of material injury in the **Federal Register,** will be liable for the assessment of countervailing duties. We will direct the U.S. Customs Service to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before September 13, 1989, the date the ITC published in the **Federal Register,** its final affirmative determination of threat of material injury, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to these entries.

A cash deposit of estimated countervailing duties must be made on all entries of fresh, chilled, and frozen pork from Canada entered, or withdrawn from warehouse, for consumption on or after the date of publication of this countervailing duty order in the **Federal Register.**

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Kay Halpern, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 377-5414, or 377-0192.

SUPPLEMENTARY INFORMATION: The product covered by this investigation is fresh, chilled, and frozen pork, currently classifiable under *Harmonized Tariff Schedule* (HTS) item numbers 0203.11.00, 0203.12.90, 0203.19.40, 0203.21.00, 0203.22.90, and 0203.29.40. Specifically excluded from this investigation are any processed or otherwise prepared or preserved pork products such as canned hams, cured bacon, sausage and ground pork.

In accordance with section 705(a) of the Act (19 U.S.C. 1671d(a)), on July 24, 1989, the Department published its final determination that producers or exporters of fresh, chilled, and frozen pork in Canada received benefits which constitute subsidies within the meaning of the countervailing duty law (54 FR 30774). On September 6, 1989, in accordance with section 705(d) of the Act, the ITC notified the Department of its determination that subsidized imports of fresh, chilled, and frozen pork from Canada are threatening material injury to a U.S. industry. The ITC also determined, pursuant to section 705(b)(4)(B) of the Act (19 U.S.C. 1671d(b)(4)(B)) that material injury would not have been found but for the suspension of liquidation of entries of fresh, chilled, and frozen pork from Canada.

Therefore, in accordance with section 706 of the Act (19 U.S.C. 1671e), the Department directs U.S. Customs officers to assess, upon further advice of the administering authority pursuant to sections 706(a)(1) and 751 of the Act (19 U.S.C. 1671(e)(a)(1) and 1675), countervailing duties equal to the amount of the net subsidy determined or estimated to exist for all entries of fresh, chilled, and frozen pork from Canada. In accordance with section 706(b)(2), these countervailing duties will be assessed on all unliquidated entries of fresh, chilled, and frozen pork from Canada entered, or withdrawn from warehouse, for consumption, on or after September 13, 1989, the date on which the ITC published notice of its final affirmative determination of threat of material injury in the **Federal Register.** We have directed the U.S. Customs Service to terminate the suspension of liquidation for all entries of fresh, chilled, and frozen pork from Canada, entered, or withdrawn from warehouse, for consumption before September 13, 1989, the date on which the ITC published its final affirmative determination of threat of material injury in the **Federal Register,** and to release any bond or other security, and refund any cash deposit posted to secure the payment of estimated countervailing duties with respect to these entries.

On and after the date of publication of this notice, U.S. Customs officers must require a cash deposit of Can$0.08/kg. (Can$0.036/lb.) for all entries of fresh, chilled, and frozen pork from Canada, and a cash deposit of zero for all entries of fresh, chilled, and frozen sow and boar meat.

This determination constitutes a countervailing duty order with respect to fresh, chilled, and frozen pork from

Canada pursuant to sections 705(d) and 706(a) of the Act (19 U.S.C. 1671d(d) and 1671e(a)). Interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of an updated list of orders currently in effect.

Notice of Review: In accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)), the Department hereby gives notice that, if requested, it will commence an administrative review of this order. For further information regarding this review, contact Holly Kuga at (202) 377-2786, Office of Countervailing Compliance.

This notice is published in accordance with sections 705(d) and 706(a) of the Act (19 U.S.C. 1671d(d) and 1671e(a)).

Dated: September 14, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-22342 Filed 9-21-89; 8:45 am]

BILLING CODE 3510-DS-M

[C-122-805]

Countervailing Duty Order and Amendment to the Final Affirmative Countervailing Duty Determination of New Steel Rail, Except Light Rail, from Canada

AGENCY: Import Administration, International Trade Administration.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Canada of new steel rail, except light rail ("steel rail"). In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is threatened with material injury by reason of imports of steel rail from Canada. The ITC did not determine, pursuant to section 705(b)(4)(B) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1671d(b)(4)(B)), that the domestic industry would have been materially injured but for the suspension of liquidation of entries of steel rail from Canada.

When the ITC finds threat of material injury, and makes a negative "but for" finding, the "Special Rule" provision of section 706(b)(2) of the Act (19 U.S.C. 1671e(b)(2)) applies. Therefore, all unliquidated entries of steel rail from Canada, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register** will be liable for the assessment of countervailing duties. We will direct the U.S. Customs Service to terminate the suspension of liquidation for entries entered, or withdrawn from warehouse, for consumption before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to these entries.

A cash deposit of estimated countervailing duties must be made on all entries of the subject merchandise from producer exporters, except entries by Algoma Steel Corporation (Algoma), entered, or withdrawn from warehouse, for consumption on or after the date of publication in the **Federal Register** of the ITC's final determination.

EFFECTIVE DATE: September 22, 1989.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose or Margot Paijmans, Office of Countervailing Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-5414 or (202) 377-1442.

SUPPLEMENTARY INFORMATION: The product covered by this investigation is new steel rail, whether of carbon, high carbon, alloy or other quality steel, and includes, but is not limited to, standard rails, all main line sections (at least 30 kg. per meter or 60 pounds per yard), heat-treated or head-hardened (premium) rails, transit rails, contact rail (or "third rail") and crane rails. Rails are used by the railroad industry, by rapid transit lines, by subways, in mines and in industrial applications.

Specifically excluded from this investigation are light rails (rails less than 30 kg. per meter or 60 pounds per yard). Also excluded are relay rails which are used rails taken up from primary railroad track and relaid in a railroad yard or on a secondary track.

The product covered by this investigation is currently provided for under the following HTS subheadings: 7302.10.1020, 7302.10.1040, 7302.10.5000 and 8548.00.0000. Prior to January 1, 1989, such merchandise was classifiable under items 610.2010, 610.2025, 610.2100 and 688.4280 of the *Tariff Schedules of the United States Annotated* (TSUSA).

In accordance with section 705(a) of the Act (19 U.S.C. 1671d(a)), on July 26, 1989, the Department made its final determination that benefits which constitute subsidies within the meaning of the countervailing duty law are being provided to producers, manufacturers or exporters in Canada of steel rail (54 FR 31991, August 3, 1989). On September 8, 1989, in accordance with section 705(d) of the Act, the ITC notified the Department that imports of steel rail are threatening material injury to a U.S. industry. The ITC also determined, pursuant to section 705(b)(4)(B) of the Act (19 U.S.C. 1671d(b)(4)(B)), that material injury would not have been found but for the suspension of liquidation of entries of new steel rail from Canada.

Subsequent to the Department's final determination, Sydney Steel Corporation (Sysco) made an allegation that clerical errors had been made in the calculation of the final rate. The Department conducted a review based on these comments and hereby amends its final determination to correct two of the alleged errors. These corrections change the estimated net subsidy for all manufacturers, producers or exporters in Canada of steel rail, except as noted below, from 113.56 percent *ad valorem* to 112.34 percent *ad valorem*.

Therefore, in accordance with sections 706 and 751 of the Act (19 U.S.C. 1671e and 1675), the Department will direct U.S. Customs officers to assess countervailing duties equal to the amount of net subsidy determined to exist for all entries of steel rail from Canada, upon further advice by the administering authority pursuant to section 706(a)(1) of the Act (19 U.S.C. 1671(e)(a)(1)). In accordance with section 706(b)(2), these countervailing duties will be assessed on all unliquidated entries of the subject merchandise from producer exporters, except entries by Algoma, entered, or withdrawn from warehouse, for consumption on or after the date on which the ITC publishes notice of its final affirmative determination of threat of material injury in the **Federal Register**. Algoma is excluded from this order. We will direct the U.S. Customs Service to terminate the suspension of liquidation for all entries of steel rail from Canada, entered, or withdrawn from warehouse, for consumption before the date on which the ITC publishes its final affirmative determination of threat of material injury in the **Federal Register**, and to release any bond or other security, and refund any cash deposit, posted to secure the payment of estimated countervailing duties with respect to these entries.

On or after the date of publication in the **Federal Register** of the ITC's final determination, U.S. Customs officers

must require a cash deposit equal to the estimated net subsidy rate noted below for entries of steel rail from Canada:

Manufacturers/Producers/Exporters	Estimated net subsidy (percent)
All Others	112.34
Algoma Steel Corporation	0.00
Sydney Steel Corporation	112.34
Bernard Railtrack Export Inc.	112.34

Entries of the subject merchandise by Grand Valley, Sessenwein, C.P. Rail, and Nortrack (all of whom are non-producer exporters) will not be subject to suspension of liquidation or a cash deposit equal to the estimated net subsidy if it can be demonstrated to the U.S. Customs Service that the entries of the subject merchandise were produced by, and purchased from, Algoma.

This determination constitutes an amendment to the final determination and a countervailing duty order with respect to steel rail from Canada, pursuant to sections 705(d) and 706(a) of the Act (19 U.S.C. 1671d(d) and 1671e(a)). Interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of an updated list of orders currently in effect.

This notice is published in accordance with sections 705(d) and 706(a) of the Act (19 U.S.C. 1671d(d) and 1671e(a)).

Dated: September 14, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-22343 Filed 9-21-89; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to and deletion from procurement list.

SUMMARY: This action adds to and deletes from Procurement List 1989 commodities to be produced and services to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: October 23, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On June 16, July 14, 28 and August 4, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 25601, 29769, 31357 and 32106) of proposed additions to and deletion from Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

Additions

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and provide the services at a fair market price and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodity and services listed.

c. The actions will result in authorizing small entities to produce the commodity and provide the services procured by the Government.

Accordingly, the following commodity and services are hereby added to Procurement List 1989:

Commodity

Cover, Toxicological Agents Protective
8415-00-261-6443

Services

Commissary Shelf Stocking, U.S. Naval Academy, Annapolis, Maryland
Commissary Shelf Stocking & Custodial, Fort Sam Houston, Texas
Janitorial/Custodial, Naval Propulsion Training Unit, Complex (NPTU), Naval Weapons Station, Charleston, South Carolina

Deletion

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

Accordingly, the following commodity is hereby deleted from Procurement List 1989:

Food Packet, Survival, Aircraft, Life Raft, Individual, 8970-01-028-9406

Beverly L. Milkman,

Executive Director.

[FR Doc. 89-22411 Filed 9-21-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989; Proposed Additions and Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to and deletion from procurement list.

SUMMARY: The Committee has received proposals to add to and delete from Procurement List 1989 a commodity to be produced and services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: October 23, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published November 15, 1988 (53 FR 46018):

Janitorial/Custodial, U.S. Post Office and Courthouse, Vicksburg, Mississippi.
Planting and Transplanting Horticultural Materials, USFS, Bend Pine Nursery Market, 63095 Deschutes Road, Bend, Oregon.

Deletion

It is proposed to delete the following commodity from Procurement List 1989, which was published November 15, 1988

(53 FR 46018): Pamphlets (3229–S), 7690–00–NSH–0010. (Requirements of GPO, Philadelphia, PA—DLA Regulations only).

Beverly L. Milkman,

Executive Director.

[FR Doc. 89–22412 Filed 9–21–89; 8:45 am]

BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Advisory Committee Meeting

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATE: The meeting will be held at 9 AM, Wednesday and Thursday, 11 & 12 October 1989.

ADDRESS: The meeting will be held at Palisades Institute for Research Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Warner Kramer, AGED Secretariat, 2011 Crystal Drive, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquistion, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military propose to initiate with industry, universities or in their laboratories. The Microelectronics area includes such programs as integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. II 10(d) (1982)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly, this meeting will be closed to the public.

Dated: September 18, 1989.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89–22387 Filed 9–21–89; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

[CFDA NOS. 84.094B and 84.202]

Graduate and Professional Study Fellowships and Grants to Institutions to Encourage Minority Participation in Graduate Education Program

AGENCY: Department of Education.

ACTION: Notice of technical assistance workshop.

SUMMARY: This document is a supplement to the Notices Inviting Applications for New Awards under the two programs cited above. The Notices Inviting Applications for New Awards Under the Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowhips, and the Minority Participation in Graduate Education Program for Fiscal Year 1990 were published in teh **Federal Register**, Vol. 54, No. 155, 33492, on Monday August 14, 1989, and Vol. 54, No. 157, 33816, on Wednesday, August 16, 1989, respectively. The Acting Assistant Secretary for Postsecondary Education of the U.S. Department of Education will conduct two Technical Assistance Workshops to assist applicants under the Graduate and Professional Study Fellowships and the Minority Participation in Graduate Education Program. These workshops will be conducted by representatives of the Office of Higher Education Program Services.

DATES: The Technical Assistance Workshops are scheduled to be held as follows: October 2—General Services Administration Building, Regional Office Building Number 3, Room 1909, 7th & D, Streets, SW., Washington, DC 20407.

Te following time schedule will be used: 8:00 a.m. to 9:30 a.m.—Patricia Roberts Harris Fellowships Program—Graduate and Professional Study Fellowshps; 10:00 a.m. to 12:00 p.m.—Minority Participation in Graduate Education Program.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Miller, Mr. Walter T. Lewis, or Mrs. Barbara J. Harvey, Office of Postsecondary Education, Division of Higher Education Incentive Programs, on (202) 732–4395, 732–4393, 732–4863, respectively.

(Catalog of Federal Domestic Assistance Nos. 84.094B and 84.202, Graduate and Professional Study Fellowships and Minority Participation in Graduate Education Program, respectively.)

Dated: September 20, 1989.

James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89–22523 Filed 9–21–89; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Grant and Cooperative Agreement Award; Georgia Institute of Technology

AGENCY: U.S. Department of Energy.

ACTION: Intent to negotiate a Cooperative Agreement with Georgia Institute of Technology, a unit of the University System of Georgia, Atlanta, GA.

SUMMARY: "INTERGRATED-OPTIC SENSORS FOR MONITORING NITROGEN TRANSFER IN AGRICULTURAL CROPPING SYSTEMS." The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitive basis, a cooperative agreement DE–FC07–89ID12905 for approximately $223,000 and 12 month duration with Georgia Institute of Technology, Georgia Tech Research Institute, Economic Development Laboratory, Electromagnetic Laboratory, Atlanta, Georgia. This action is prompted by Pub. L. 93–577, the Federal Nonnuclear Energy Research and Development Act of 1974. The project is to develop a field-worthy sensor system to monitor gaseous nitrogen transfer from agricultural cropland. Georgia Tech's work involves designing and testing an intergrated-optic sensor for monitoring low levels of ammonia under simulated field conditions, determining the relationship between sensor output and simulated nitrogen losses, and to develop alternative sensor uses. Should the participant proceed through the subsequent phase the DOE cost of the proposed agreement could increase to approximately $333,000. The authority for justification for acceptance of an unsolicited proposal is DOE Financial Assistance Rules 10 CFR part 600.14(e); (i) The application is meritorious based on the general evaluation as in paragraph (d) of 10 CFR part 600.14; and (ii), The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, or if, as determined by DOE, a competitive solicitation would be inappropriate. The work at Georgia Tech meets the purpose of Pub. L. 93–577 and addresses a public

need for decreasing the utilization of energy. Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: September 11, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-22452 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (GRANT); Hawaii Department of Business and Economic Development

AGENCY: U.S. Departmentof Energy, San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the State of Hawaii, Department of Business and Economic Development in the amount of $25,000 for the PVUSA—Hawaii Project. Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), DOE/SAN has determined that eligibility for this grant award shall be limited to the State of Hawaii under criterion (B), support of an activity that would enhance the public benefits to be derived.

Grant No. DE-FG03-89SF18396

Scope of Project: The State of Hawaii is participating in the PVUSE—Hawaii project by constructing and operating the only tandan junction thin-film amorphous silicon protovoltaic device in commercial production. This project will demonstrate this advanced renewable technology in an electric utility application and determine the effects and suitability of photovoltaics on the utility grid for potential large scale systems. The entire project cost is $517,587. DOE will assist in the purchase of the photovoltaic panels.

This activity would be conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity.

FOR FURTHER INFORMATION CONTACT: William E. O'Neal, U.S. Department of Energy, San Francisco Operations Office, 1333 Broadway Oakland, CA 94612.

Issued in Oakland, CA, September 12, 1989.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 89-22453 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Grant and Cooperative Agreement Award; Purdue Research Foundation

AGENCY: U.S. Department of Energy.

ACTION: Intent to negotiate a Cooperative Agreement with Purdue Reserch Foundation, West Lafayette, IN.

SUMMARY: "DEVELOPMENT OF A NUCLEAR MAGNETIC RESONANCE BASED SENSOR TO DETECT RIPENESS OF FRUIT." The U.S. Department of Energy (DOE), Idaho Operations Office, intends to negotiate, on a noncompetitrive basis, a cooperative agreement (No. DE-FC07-89ID12917) for approximately $83,000 and 12 month duration with Purdue Research Foundation, Division of Sponsored Programs, Houde Hall, West Lafayette, IN. This action is prompted by Pub. L. 93-577, the Federal Nonnuclear Energy Research and Development Act of 1974. The purpose of the project is to validate the feasibility of developing a low cost nuclear magenetic resonance based sensor to determine the ripeness and quality of fruit by designing, fabricating and testing a prototype system. The authority for justification for acceptance of an unsolicited proposal is DOE Financial Assistance Rules 10 CFR Part 600.14(e); (i) The application is meritorious based on the general evaluation as in paragraph (d) of 10 CFR part 600.14; and (ii) The proposed project represents a unique or innovative idea, method, or approach which would not be eligible for financial assistance under a recent, current, or planned solicitation, or if, as determined by DOE, a competitive solicitation would be inappropriate. The work at Purdue Research Foundation meets the Pub. L. 93-577 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the contract specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Operations Office, Dallas L. Hoffer, Contract Specialist (208) 526-0014.

Dated: September 11, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-22455 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance Award (Grant); University of Chicago

AGENCY: U.S. Department of Energy, San Francisco Operations Office.

ACTION: Notice of restriction of eligibility for award.

SUMMARY: The Department of Energy, San Francisco Operations Office, announces that it intends to award a grant to the University of Chicago, Chicago, IL, in the amount of $15,000, for "Advanced Tubular Concentrator". Pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7(b)(2)(i), DOE/SAN has determined that eligibility for this grant award shall be limited to the University of Chicago under criterion (A), continuation, or renewal of, an existing DOE grant.

Grant No. DE-FG03-85SF15753

SCOPE OF PROJECT: The University of Chicago proposes to perform research in the area of advanced, non-tracking, evacuated tubular collectors in the following areas:

(1) Survey the current state of the applications of advanced evacuator collector technology in Japan, Europe, and Israel. From the results of this survey, define those applications that will make optimum use of the ICPC high temperature capability and identify those concepts that are most worthy of further development.

(2) Explore the potential for cooperative relationships with potential U.S. manufacturers of the ICPC.

This research is expected to directly support other industrial research and will result in optimized analytical designs, design tools and direct assistance by University of Chicago staff to the engineering development of commercial designs. The University of Chicago currently conducts research under DE-FG03-85SF15753. The proposed effort is a continuation, or renewal of, this grant.

The *criterion in 600.7(b)(2)(i) Which is Being Relied Upon to Justify the Action.* The activity to be funded is a continuation of research currently being funded by DOE. Competition for support would have a significant adverse impact on the continuity of the Solar Buildings Technology Research program because the University of Chicago research is an integral part of the program. The basis for this financial assistance action is criterion A which states that an activity may be funded if it is necessary for the satisfactory completion of, or is a continuation or renewal of, an activity presently being funded by DOE.

FOR FURTHER INFORMATION CONTACT: Chris Dowling, U.S. Department of

Energy, San Francisco Operations Office, 1333 Broadway, Oakland, CA 94612.

Issued in Oakland, CA, August 23, 1989.

Kathleen M. Day,

Director, Contracts Management Division.

[FR Doc. 89-22457 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Grant and Cooperative Agreement Awards, VORTEC Corp.

AGENCY: Department of Energy.

ACTION: Intent to negotiate a Cooperative Agreement with the VORTEC Corporation, Collegeville, PA.

SUMMARY: "DEVELOPMENT OF A RAPID GLASS REFINER" The U.S. Department of Energy (DOE), Idaho Operations Office, gives notice that it intends to negotiate, based on an unsolicited proposal, on a noncompetitive basis, a cooperative agreement for apporoximately $3,756,696 over a five year project period, with VORTEC Corporation, Collegeville, PA. This action is prompted by Pub. L. 93-577, the Federal Nonnuclear Energy Research and Development Act of 1974. The project involves the development of a rapid glass refiner process that can be applied to emerging rapid glass melting technologies as well as conventional glass melting furnaces. When applied to either melter, the system allows for quicker release of gas seeds in the glass batch. VORTEC work will cover concept validation and design/engineering analysis activities, economic/market analysis, hot glass testing and fabrication, assembly, and testing of a commercial scale system. The authority and justification for acceptance of an unsolicited assistance proposal is DOE Financial Assistance Rules 10 CFR 600.14(e)(i)(ii). The project offers high technical merit and represents an innovative approach. This work meets the purpose of Pub. L. 95-577 and addresses a public need for decreasing the utilization of energy. Public response may be addressed to the Contract Specialist below.

Contact: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Kenny K. Osborne, Contract Specialist (208) 526-0805.

Dated: September 8, 1989.

J. Roger Gonzales,

Director, Contracts Management Division.

[FR Doc. 89-22459 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Minority Economic Impact

Determination of Noncompetitive Financial Assistance; Alabama

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to Alabama A&M University to support the University's institutional capacity to carry out energy-related research.

The grant is being renewed for a one-year period, effective September 30, 1989. The total estimated cost is $594,042, which consists of DOE funding in the amount of $165,000 and recipient cost sharing of $429,042.

Procurement Request No.: 05-890R21701.001.

Project Scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the Alabama A&M University and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on enhancing the University's research capability in specific energy-related areas; strengthening research and development support mechanisms in grants and contract management; developing a centralized document processing center to aid in proposal and progress report development; and developing linkages with DOE, its research centers, and private industry to identify area of collaboration. Accomplishments during the initial phase of the project indicate that Alabama A&M University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Alabama A&M University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Personnel and Management Evaluation Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8790, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 14, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division Oak Ridge Operations.

[FR Doc. 89-22450 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOD announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to Clark Atlanta University to support the institution's efforts in improvement of the administrative infrastructure of the University's Center for Computational Sciences.

The grant is being renewed for a one-year period, effective September 30, 1989. DOE support is estimated at $141,076, with the institution cost sharing $90,399.

Procurement Request No.: 05-890R21700.001.

Project Scope: This grant renewal will allow the recipient to continue efforts in improving the administrative infrastructure of the University's Center for Computational Sciences and, additionally, enhance the pool of minorities pursuing careers in this area of science. Objectives of the project are to improve technical support services; promote and sustain research alliances with other universities, national laboratories, business, and industry; improve grants and fiscal management; augment library holdings and search capabilities; decentralize administrative policies and procedures; and enhance recruitment efforts. Accomplishments during the initial phase of the project indicate that Clark Atlanta University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Clark Atlanta University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Personnel and Management Evaluation Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8790, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 14, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division Oak Ridge Operations.

[FR Doc. 89-22451 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance; North Carolina A&T State University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to North Carolina A&T State University to support the institution's efforts in developing the Center for Energy Research and Training (CERT) at the University. CERT's goal is to improve the competitiveness of the University in energy research, demonstrations, and training.

The grant is being renewed for a one-year period, effective September 30, 1989. The total estimated cost is $236,850, which consists of DOE funding in the amount of $145,000 and recipient cost sharing of $91,850

Procurement Request No.: 05-890R21764.001.

Project Scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the North Carolina A&T State University and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on continued infrastructure development; continued enhancement of energy research and training for faculty and students; improving linkages with DOE and the private sector; and collaboration with University officials working with the DOE-supported Science and Technology Alliance. Accomplishments during the initial phase of the project indicate that North Carolina A&T State University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to North Carolina A&T State University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Personnel and Management Evaluation Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8790, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 14, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-22454 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Department of Noncompetitive Financial Assistance; Texas A&I University

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to Texas A&I University to support the institution's efforts in strengthening the infrastucture and research activities of the South Texas Energy Research and Development (STERAD) Center.

The grant is being renewed for a one-year period, effective September 30, 1989. The total estimated cost is $394,977, which consists of DOE funding in the amount of $99,794 and recipient cost sharing of $295,183.

Procurement Request No.: 05-890R21703.001.

Project Scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the University and the South Texas region and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on finalizing improvements to administrative procedures and target specific areas of research for development within the STERAD Center. Accomplishments during the initial phase of the project indicate that Texas A&I University will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to Texas A&I University.

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer, Personnel and Management Evaluation Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8790, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 14, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division, Oak Ridge Operations.

[FR Doc. 89-22456 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

Determination of Noncompetitive Financial Assistance; University of Texas at El Paso

AGENCY: Department of Energy (DOE).

ACTION: Notice.

SUMMARY: DOE announces that pursuant to 10 CFR 600.7(b)(2), it intends to renew on a noncompetitive basis a grant to the University of Texas at El Paso (UTEP) to support the efforts to improve the University's administrative infrastructure.

The grant is being renewed for a one-year period, effective September 30, 1989. DOE support is estimated at $64,374, with the institution cost sharing $43,175.

Procurement Request No.: 05-890R21761.001

Project Scope: This grant renewal will allow the recipient to pursue its goal to promote energy-based science and technology research and development efforts at the University and thereby increase the pool of minorities pursuing research careers in these areas. During this phase of the project, the recipient will focus on establishing an energy research center as a separate optional unit to provide ongoing infrastructure support for energy-related programs; strengthening University/private sector energy research linkages; expanding involvement of minority undergraduate and graduate students in energy research and outreach activities; and continuing implementation of energy research, outreach, and demonstration projects already funded. Accomplishments during the initial phase of the project indicate that the University of Texas at El Paso (UTEP) will successfully achieve these objectives with continued DOE funding and that competition for support would result in considerable delay in achieving some of the results anticipated during the upcoming phase of the project as well as inhibit the objectives of the DOE Minority Educational Institution Assistance Program. Award is therefore restricted to the University of Texas at El Paso (UTEP).

FOR FURTHER INFORMATION CONTACT: Rufus H. Smith, DOE Project Officer,

Personnel and Management Evaluation Division, Oak Ridge Operations, U.S. Department of Energy, P.O. Box 2001, Oak Ridge, TN 37831-8790, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on September 14, 1989.

Peter D. Dayton,

Director, Procurement and Contracts Division Oak Ridge Operations.

[FR Doc. 89-22458 Filed 9-21-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3649-5]

Region 6; Approvals of Prevention of Significant Deterioration Permits

Notice is hereby given that the Environmental Protection Agency (EPA), Region 6, has issued Prevention of Significant Deterioration (PSD) permits to the following:

1. PSD-TX-752—Quantum Chemical Corporation: This permit, issued on January 12, 1989, authorizes the construction of Ethylene Unit No. 1 at the existing chemical plant located at 11603 Strang Road, La Porte, Harris County, Texas.

2. PSD-TX-342M-1—Chevron U.S.A., Inc.: PSD-TX-342M-1 modifies PSD-TX-342 to authorize an increase of the maximum allowable heat input rate on five combustion units, and to substitute "tube design change" instead of "tube removal or addition" in the section entitled "Use of Flue Gas Oxygen Meter as BACT for Combustion Units." This modified permit was issued on February 17, 1989.

3. PSD-TX-704M-1—Koch Refining Company: PSD-TX-704M-1 modifies PSD-TX-704 to authorize the removal of references to the ISO correction equation contained in Special Provision Nos. 3 and 4. This modified permit was issued on March 6, 1989.

4. PSD-TX-649M-1—Amoco Oil Company: PSD-TX-649M-1 modifies PSD-TX-649 to reflect changes in the standby status of several boilers because only two of the three permitted cogeneration trains were constructed. This modified permit was issued March 16, 1989.

5. PSD-TX-636M-2—Exxon Corporation: PSD-TX-636M-2 modifies PSD-TX-636M-1 to reflect the five engines ultimately constructed of the thirteen permitted reciprocation internal combustion engines, and also identifies the make, model number and emission control procedures for the catalytic converter installed on each engine. This modified permit was issued on March 16, 1989.

6. PSD-TX-285aM-1—Shintech, Incorporated: PSD-TX-285aM-1 modifies PSD-TX-285a to authorize an increase in the production capacity of its two existing polyvinyl chloride plants, and that all proposed and all existing PSD and non-PSD regulated facilities be included in the scope of sone consolidated PSD permit. This modified permit was issued on March 29, 1989.

7. PSD-TX-474M-4—Exxon Company, U.S.A.: PSD-TX-474M-4 modifies PSD-TX-474M-3 to authorize the debottlenecking of the Flexicokeing Unit at the existing refinery located at 2800 Decker Drive, Baytown, Harris County, Texas which will result in an increase in low Btu gas (LBG) production. This modification was proposed only for the purpose of maintaining compatibility between the state and PSD permits. The modified permit was issued on April 18, 1989.

8. PSD-TX-751—Phillips Petroleum Company: This permit, issued on April 26, 1989 authorizes the construction of a new ethylene production facility at the existing refinery and petrochemical complex located at the intersection of State Highway 35 and FM Road 524, approximately 4 miles northwest of Sweeny, Brazoria County, Texas.

9. PSD-TX-702M-1—Mobile Exploration and Producing U.S., Inc.: PSD-TX-702M-1 modifies PSD-TX-702 to authorize the removal of the sulfur limitation on the gas processed at the Salt Creek Plant located approximately 7 miles northwest of Clairemont, Kent County, Texas. The modified permit was issued on May 15, 1989.

10. PSD-TX-413M-1—Koch Refinery Company: PSD-TX-413M-1 modifies PSD-TX-413 to authorize a change in the process design and increase the capacity of the currently permitted catalyst and naphtha hydrodesulfurization units at the existing petroleum refinery located at 9254 Up River Road, Corpus Christi, Nueces County, Texas. The modified permit was issued on June 1, 1989.

11. PSD-TX-351M-1—Southwestern Portland Cement Company: PSD-TX-351M-1 modifies PSD-TX-351 to authorize the modification of the SO_2 emission allowable from 513 pounds per hour to 42 pounds per hour based on results of stack sampling. The modified permit was issued on June 12, 1989.

12. PSD-TX-739M-1—Tenaska III Texas Partners: PSD-TX-739M-1 modifies PSD-TX-739 to authorize the installation of one 182 million Btu auxiliary boiler (a high heat release boiler) instead of the three 74 million Btu auxiliary boilers proposed in the original permit at the gas turbine cogeneration facility located at 500 Loop 286 NW., Paris, Lamar County, Texas. The modified permit was issued on June 23, 1989.

These permits have been issued under EPA's Prevention of Significant Deterioration of Air Quality Regulations at 40 CFR 52.21, as amended August 7, 1980. The time period established by the consolidated Permit Regulations at 40 CFR 124.19 for petitioning the Administrator to review any condition of the permit decisions has expired. Such a petition to the Administrator is, under 5 U.S.C. 704, a prerequisite to the seeking of judicial review of the final agency action. Documents relevant to the above actions are available for public inspection during normal business hours at the Air, Pesticides and Toxics Divison, Environmental Protection Agency, Region 6, 1445 Ross Avenue Dallas, Texas 75202, telephone (214) 655-7229.

Under section 307(b)(1) of the Clean Air Act, judicial review of the approval of these actions is available, if at all, only by the filing of a petition for review in the United States Fifth Circuit Court of Appeals, within 60 days of September 22, 1989. Under section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

This notice will have no effect on the National Ambient Air Quality Standards.

The Office of Management and Budget has exempted this information notice from the requirements of Section 3 of Executive Order 12291.

Dated: September 14, 1989.

Joe D. Winkle,

Acting Regional Administrator.

[FR Doc. 89-22415 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3650-3]

Environmental Impact Statements; Notice of Availability of Weekly Receipts

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements Filed September 11, 1989 Through September 15, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890247, Final, COE, FL. Miami Harbor Channel Navigation Improvements, Implementation, Dade Country, FL, Due: October 16, 1989, Contact: Gerald Atmar (904) 791–2615.

EIS No. 890253, Draft, FHW, VA, Southeastern Expressway Improvement, I–464/I–64 to VA–44 (Norfolk-Virginia Beach Expressway) Construction Section 10 & 404 Permits, CGD Bridge Permit, York and James City, Counties, VA Due: November 10, 1989, Contact: James M. Tumlin (804) 771–2371.

EIS No. 890254, Draft, BLM, CO. San Luis Planning Area, Land and Resources Management Plan, Implementation, Alamosa, Costilla Saguache, Conejos and Rio Grande, CO, Due: December 25, 1989, Contact: Dave Taliaferro (719) 275–0631.

EIS No. 890255, Draft, AFS, UT, Uinta National Forest, Aterial Travel Route Development and Management, Implementation, Utah and Wasatch Counties, UT, Due: Novemer 6, 1989, Contact: Larry B. Call (801) 377–5780.

EIS No. 890256, Final, COE, HI, Kahului Harbor Light Draft Navigation Improvement, Implementation, Island of Maui, Hawaiian Archipelago, HI, Due: October 23, 1989, Contact: Dr. James E. Maragos (808) 438–2263.

EIS No. 890257, Final, BOP, SC, ESTILL Minimum Security Federal Prison Camp, Construction and Operation, Estill, Hampton Country, SC, Due: October 23, 1989, Contact: William Patrick (202) 272–6871.

Amended Notices

EIS No. 890192, Draft, USN, GU, TT, Relocatable Over-the-Horizon Radar (ROTHR)/Electronic Installations in the Western Pacific, Construction and Operation, Tinian, Commonwealth of the Northern Mariana Islands and Guam, Due: October 5, 1989, Contact: E.C. Rushing (808) 471–3088. Published FR–7–21–89—Review period extended.

EIS No. 890203, Draft, APH, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, PRO, National Boll Weevil Cooperative Control Program, Implementation and Funding, AL, AZ, AR, CA, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, TX, VA, Due: November 3, 19889, Contact; Mike Werner (202) 436–8565. Published FR 7–28–89—Review period extended.

Dated: September 19, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89–22465 Filed 9–21–89 8:45am]

BILLING CODE 6560–50–M

[ER-FRL-3650-4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared September 4, 1989 through September 8, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 7, 1989 (54 FR 15006).

Draft EISs

ERP No. D–BLM–J20010–UT, Rating LO2, USPCI Clive Transfer/Storage/Incineration Facility and Associated Transportation/Utility Corridors, Construction and Operation, Right-of-Ways and/or Land Exchange, Tooele County, UT.

Summary. EPA suggests that information for the final EIS could be improved in several areas including additional discussion on the options for facility inspections and minor changes in the air quality analysis. EPA has no objections to the proposed action.

ERP No. D–COE–K30019–GU, Rating EC2, Agana Bayfront Area Typhoon and Storm Surge Protection Facilities (Guam Comprehensive Study), Construction, Anigua to Dungca's Beach, GU.

Summary. EPA expressed environmental concerns and asked the Corps to reevaluate Alternative C because it would result in fewer adverse environmental impacts and a more positive cost-benefit ratio than the Corps' preferred Alternative B. EPA also expressed concerns regarding mitigation for loss of riparian resources and shorebird habitat and compliance with the Clean Water Act and the Executive Order on Floodplain Management.

Final EISs

ERP No. F1–AFS–J65097–00, Norbeck Wildlife Preserve Land Management Plan, Implementation, Black Hills National Forest Land and Resource Management Plan, Custer and Pennington Counties, SD.

Summary. EPA's concerns with the draft EIS were addressed in this document. EPA still feels that Alternative 11 which was really a proposal, should have been involved in one or more of the alternatives 1–10 to be fairly evaluated.

ERP No. F–BOP–C81012–PR, Guaynobo Metropolitan Detention Center, Construction and Operation, Implementation, PR.

Summary. EPA believes that this project will not result in any significant adverse environmental impacts and has no objection to the implementation of the project.

ERP No. F–BOP–C81012–PR, Guaynabo Metropolitan Detention Center, Construction and Operation, Implementation, PR.

Summary. EPA believes that this project will not result in any significant adverse environmental impacts and has no objection to the implementation of the project.

ERP No. FS–CDB–K85060–CA, Azusa Central Business District Redevelopment Project Area, Parcel A/Site 1, Increased Office and Commercial Space Construction, CDB Grant/Section 108 Loan Guarantee, City of Azusa, Los Angeles County, CA.

Summary. Review of the final WIS was deemed necessary. No formal comments were sent to the agency.

ERP No. F–FHW–J40116–ND, I–94 Corridor Improvements, Horace Road to US 75, Funding, COE Section 404 Permit and U.S. Coast Guard Permit, Cass County, ND and Clay County, MN.

Summary. Most of EPA's concerns were addressed in the final EIS. In the Minnesota portion of the project, concerns deal with documentation of noise impacts, and a statement of commitment regarding mitigation in this area.

ERP No. F–FHW–L40168–AK, South Cushman Street Upgrading, Van Horn Road to Gaffney Road, Funding, Fairbanks, North Star Borough, AK.

Summary. Review of the Final EIS has been completed and the project found to be satisfactory.

ERP No. F–UAF–J11004–MT, Malstrom AFB, Deployment of the Second KC–135R Air Refueling Squadron, 301st Air Refueling Wing, City of Great Falls, Cascade County, MT.

Summary. EPA has no objection to the selection of the preferred alternative with the mitigation specified in the final EIS. The implementation process for optional mitigation suggested in the EIS and specific criteria governing that process needs to be further clarified.

ERP No. F–USA–A11067–UT, Tooele Army Depot On-Site Facility for Disposal of Stockpiled Chemical Agents and Munitions, Construction and Operation, Tooele County, UT.

Summary. EPA's concerns on the project have been adequately addressed.

Dated: September 19, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-22466 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59874; FRL-3649-9]

Toxic and Hazardous Substances; Certain Chemical Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notice are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 14 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89-159, August 23, 1989.

Y 89-160, August 24, 1989.

Y 89-161, 89-162, 89-163, 89-164, 89-165, 89-166, 89-167, 89-168, 89-169, August 30, 1989.

Y 89-170, 89-171, 89-172, September 5, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-159

Manufacturer. Confidential.

Chemical. (G) Acrylate methacrylate polymer.

Use/Production. (G) Coating for, open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-160

Importer. Confidential.

Chemical. (G) Polymethacrylic acid derivative.

Use/Import. (G) Binding agent for offset printing. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 2,000 mg/kg species (Rat). Eye irritation: none species (Rabbit). Skin irritation: negligible species (Rabbit). Mutagenicity: negative.

Y 89-161

Manufacturer. Confidential.

Chemical. (G) Polyurethane polycarbonate.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-162

Manufacturer. Confidential.

Chemical. (G) Polyurethane polycarbonate.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-163

Manufacturer. Confidential.

Chemical. (G) Polyurethane polycarbonate.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-164

Manufacturer. Confidential.

Chemical. (G) Polyether polyurethane.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-165

Manufacturer. Confidential.

Chemical. (G) Polyester polycarbonate polyurethane.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-166

Manufacturer. Confidential.

Chemical. (G) Polycarbonate polyurethane.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-167

Manufacturer. Confidential.

Chemical. (G) Polycarbonate polyurethane.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-168

Manufacturer. Confidential.

Chemical. (G) Polyether polyurethane.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-169

Manufacturer. Confidential.

Chemical. (G) Polyester polyurethane.

Use/Production. (G) Coating for open, nondispersive use in original equipment manufacture. Prod. range: Confidential.

Y 89-170

Importer. Ricoh Corporation.

Chemical. (G) Styrene, acrylic copolymer.

Use/Import. (G) Binder for photocopying toner. Import range: Confidential.

Y 89-171

Importer. Ricoh Corporation.

Chemical. (G) Polyester.

Use/Import. (G) Binder for photocopying toner. Import range: Confidential.

Y 89-172

Importer. Ricoh Corporation.

Chemical. (G) Polyester.

Use/Import. (G) Binder for photocopying toner. Import range: Confidential.

Dated: September 8, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-22413 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59875; FRL-3650-1]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of

November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 49 such PMN(s) and provides a summary of each.

DATES: Close of Review Periods:

Y 89–173, September 6, 1989.
Y 89–174, 89–175, September 10, 1989.
Y 89–176, 89–177, 89–178, 89–179, 89–180, 89T–999, 89–181, 89–182, 89–183, 89–184, 89–185, 89–186, 89–187, 89–188, 89–189, 89–190, 89–191, 89–192, 89–193, 89–194, 89–195, 89–196, 89–197, 89–198, 89–199, 89–200, 89–201, September 11, 1989.
Y 89–202, September 14, 1989.
Y 89–203, 89–204, 89–205, 89–206, 89–207, 89–208, 89–209, 89–210, September 11, 1989.
Y 89–211, September 14, 1989.
Y 89–212, 89–213, September 11, 1989.
Y 89–214, September 12, 1989.
Y 89–215, September 14, 1989.
Y 89–216, September 17, 1989.
Y 89–217, 89–218, 89–219, September 18, 1989.
Y 89–220, September 25, 1989.
Y 89–221, September 26, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS–799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB–44, 401 M Street, SW, Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential document is available in the Public Reading Room NE–G004 at the above address between 8:00 a.m and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89–173

Manufacturer. Stockhausen, Inc.
Chemical. (S) 2–Propenoic acid polymer with ethanol grafted. crosslinked, sodium salt.
Use/Production. (G) Nondispersive use. Prod. range: Confidential.

Y 89–174

Manufacturer. Freeman Chemical Corporation.
Chemical. (G) Unsaturated polyester.
Use/Production. (S) Component of fiberglass sheet molding compound.

Y 89–175

Manufacturer. Westinghouse Electric Corporation.
Chemical. (G) Epoxy resin modified polyester-imide polymer.
Use/Production. (S) Electrical insulation for application on electrical equipment.

Y 89–176

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–177

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–178

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–179

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–180

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–181

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–182

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–183

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–184

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–185

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–186

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–187

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous acrylic copolymer and aqueous acrylic copolymer salts.
Use/Production. (G) Aqueous emulsion polymer. Prod. range: Confidential.

Y 89–188

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-189

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-190

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-191

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-192

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-193

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-194

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-195

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-196

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-197

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-198

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-199

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Aqueous copolymer and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-200

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-201

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-202

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-203

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-204

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential

Y 89-205

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-206

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-207

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-208

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-209

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-210

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-211

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-212

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-213

Manufacturer. S.C. Johnson & Sons, Inc.
Chemical. (G) Acrylic copolymers and salts thereof.
Use/Production. (G) Emulsion polymer. Prod. range: Confidential.

Y 89-214

Manufacturer. Confidential.
Chemical. (G) A salt of an acrylic-styrene copolymer.

Use/Production. (G) Polymeric component of ink. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50, 1,870 MG/KG species (Rat). Acute dermal toxicity: LD50 5,040 MG/KG species (Rabbit).

Y 89-215

Manufacturer. Confidential.

Chemical. (G) Polymer aromatic diacid, bis(hydroxyalkyl)aryl ether, and branched-alkanediol.

Use/Production. (G) Polymer for coating application. Prod. range: Confidential.

Y 89-216

Manufacturer. Freeman Chemical Corporation.

Chemical. (G) Polyester polyol.

Use/Production. (S) Component for industrial coil coating. Prod. range: 10,000-14,000 kg/yr.

Y 89-217

Importer. Confidential.

Chemical. (G) Polyester resin, carboxylated.

Use/Import. (G) Electrostatic powder coating. Import range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 > 3200 MG/KG species (Rat). Acute dermal toxicity: LD50 > 1000 MG/KG species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea Pig).

Y 89-218

Importer. Confidential.

Chemical. (G) Polyester resin, carboxylated.

Use/Import. (G) Electrostatic powder coating, Import range: Confidential.

Toxicity Data: Acute oral toxicity: LD50 > 3200 MG/KG species (Rat). Acute dermal toxicity: LD50 > 1000 MG/KG species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea Pig).

Y 89-219

Importer. Confidential.

Chemical. (G) Polyester resin, carboxylated.

Use/Import. (G) Electrostatic powder coating. Import range: Confidential.

Toxcity Data. Acute oral toxicity: LD50 > 3200 MG/KG species (Rat). Acute dermal toxicity: LD50 > 1000 MG/KG species (Rabbit). Eye irritation: slight species (Rabbit). Skin irritation: slight species (Rabbit). Skin sensitization: negative species (Guinea Pig).

Y 89-220

Importer. Confidential.

Chemical. (G) Polycaprolactone modified with epoxy resin.

Use/Import. (G) Resin coating. Prod. range: Confidential.

Y 89-221

Manufacturer. Confidential.

Chemical. (G) Polyacrylate.

Use/Production. (G) Primer. Prod. range: Confidential.

Toxicity Data. Acute oral toxicity: LD50 10,502 MG/KG species (Rat). Acute dermal toxicity: LD50 9.143 MG/KG species (Rabbit).

Dated: September 13, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-22414 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59275; FRL-3649-8]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requiremets of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of one application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by: T 89-24, September 13, 1989.

ADDRESS: Written comments, identified by the document control number "(OPTS-59275)" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, Environmental Assistance Division (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-24

Close of Review Period. September 27, 1989.

Manufacturer. Confidential.

Chemical. (G) Lingnin alkali, reaction product with triethylenetetramine and formaldehyde.

Use/Production. (G) Coagulant for water treatment. Prod. range: Confidential.

Dated: September 8, 1989.

Steven Newburg-Rinn,

Acting Director, Information Management Division, Office of Toxic Substances.

[FR Doc. 89-22416 Filed 9-21-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Statement of Policy; Bank Merger Transactions

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Adoption of policy statement.

SUMMARY: As a result of changes in the competitive environment for financial services over the last decade, the FDIC in October 1988 proposed to supplant its current policy statement on "Applications for Mergers" by adopting a revised statement of policy on "Bank Merger Transactions" (53 FR 39803). The new proposal would redefine and clarify product and geographic markets and the standards to be applied in assessing both the competitive effects and prudential concerns involved in proposed bank merger transactions. As a result of comments on the proposal, especially those from the Department of Justice, a number of changes have been made although the final policy adopted remains fundamentally as it was proposed.

DATE: The new policy statement is effective September 22, 1989.

ADDRESS: Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

FOR FURTHER INFORMATION CONTACT: William G. Hrindac, Examination Specialist, Division of Bank Supervision, (202) 898-6892.

SUPPLEMENTARY INFORMATION:

Discussion

In October 1988, the FDIC published in the **Federal Register** for public comment a proposed revised statement of policy on bank merger transactions. The proposed revised statement would redefine and clarify product and geographic markets and the standards to be applied by the FDIC in assessing both the competitive effects and prudential concerns involved in bank merger transactions.

The FDIC received five comments on the proposal—two from bank holding companies, two from trade associations (the American Bankers Association (ABA) and the U.S. League of Savings Institutions), and one from the Department of Justice (DOJ).

All comments received were generally supportive of the proposal. One of the holding companies indicated that it "wholeheartedly agrees with the FDIC's definition of both product and geographic markets in its approach to bank mergers" and further that "these new definitions more accurately reflect the true competitive situation in the marketplace." The other bank holding company remarked that it was "pleased to see the FDIC expand its definition of a 'product market' to possibly include nontraditional competitors when assessing the competitive impacts of proposed bank acquisitions."

The ABA's comments were of a similar tenor concluding with its support for "the Corporation in its emphasis on an expanded measure of competition which reflects a more accurate representation of the financial market place for purpose of a bank merger." The U.S. League stated its belief "that the revised definitions of geographic market and product market are reasonable and generally consistent with the Department of Justice's approach with respect to assessing various competitive factors in bank merger transactions."

DOJ commented in considerable detail on the proposal. DOJ first noted that the current proposal represents a substantial improvement over an earlier proposal published for comment in 1985 since the current proposal identifies the specific degree of market concentration that would distinguish mergers that were not likely to reduce competition from mergers that might have such an effect. This was done by adopting appropriate measures of concentration based on the Herfindahl-Hirshman Index. Secondly, DOJ believed the current proposal adopts a sounder analytical perspective towards the effects of mergers that eliminate potential competition and avoids an unwarranted degree of concern about such effects manifested in the earlier proposal. In these and other respects, DOJ believed the current proposal provides more specific guidance about the policy and standards to be applied by the FDIC, and reflects a more appropriate analysis of the economic factors that bear on the competitive effects of bank mergers.

Despite these positive changes, however, DOJ believed that the proposal was ambiguous with regard to the principles by which relevant product and geographic markets would be defined. More specifically, DOJ sugggested viewing individual financial services (or groups of services that are close substitutes for one another) as separate product markets and defining separate geographic markets for each.

The FDIC believes that the descriptions of product and geographic markets are sufficiently clear for a general statement of policy. The statement is intended to provide general guidance but also to retain enough flexibility for adaptation to particular factual circumstances. In appropriate factual circumstances, the policy statement will permit a concentration analysis of individual product markets and their applicable geographic markets. More typically, however, we believe the business of banking and indeed that of depository institutions generally is still predominantly local in character and hence the competition affected by a proposed merger transaction must be assessed initially on a local basis, that is, within the defined geographic market(s) in which the offices of the merging institutions are located. Furthermore, in judging the competitive effects of a proposed merger transaction, analysis and consideration must focus first on the particular mix of services offered by the merging institutions and close substitutes offered by other service providers within the geographic market(s) as defined. This approach recognizes and is consistent with the fact that competitors in some lines operating largely outside the geographic market(s) as defined as well as traditional and nontraditional competitors with a physical presence within the market(s) can moderate the anticompetitive effects of a proposed merger. The FDIC will consider the nature and extent of all such competitive influences and make a composite judgment as to whether competition may substantially be reduced based on the totality of the circumstances existing within the geographic market(s) as defined.

In moving beyond the initial analysis of concentration based on the Herfindahl-Hirshman Index (HHI), DOJ noted a possible difference between its approach and that stated in the proposed policy statement. More specifically, the policy statement included language that suggested that the FDIC would carefully examine mergers that significantly increase the HHI, even if the postmerger HHI is below 1800, and mergers that do not increase the HHI by 200 points if the postmerger HHI is above 1800. In the DOJ's view, such mergers are highly unlikely to have anticompetitive effects.

We agree and the language suggesting otherwise has been revised accordingly.

DOJ suggested the policy statement could be improved by a more extended discussion of the relevance and weight to be accorded factors other than market concentration. With respect to entry in particular, DOJ cited its experience indicating that the likelihood of entry into a market is among the most important factors in evaluating the competitive effects of a merger. Where new entry is relatively easy, DOJ asserted that a market can operate competitively even if, looking only at firms currently in the market, the market is highly concentrated. Accordingly, DOJ suggested the statement indicate that the likelihood of entry into a market be accorded "substantial" weight by the FDIC in evaluating markets that are highly concentrated, rather than being treated as one of a number of factors of equal importance.

We do not believe the likelihood of entry should be accorded substantial weight in every case. While it may be true that a concentrated market can operate competitively where entry is relatively easy, we are aware of no empirical study establishing that that is always the case. The weight to be accorded ease of entry may be heavily dependent on specific factual circumstances. Consequently, we are not prepared to automatically accord special weight to ease or likelihood of entry *per se* although the FDIC will consider any present plans of potential competitors to enter a relevant geographic market.

DOJ also noted that certain of the factors identified in the proposed statement (*e.g.*, "the attractiveness of the market in terms of population,

wealth, income levels and economic growth" and "legal impediments to entry") are but means of determining the likelihood of entry, rather than factors to be considered independent of the entry issue.

We agree and have revised the relevant language accordingly.

DOJ suggested an extended discussion of efficiencies in proposed merger transactions, emphasizing two points. First, since a primary goal of the antitrust laws is the promotion of economic efficiency, the proposed statement could clearly state that evidence that a merger will produce efficiencies will be considered by the FDIC as an element in its competitive analysis. Second, the statement should clearly indicate that it is the parties to a merger who bear the burden of establishing, by clear and convincing evidence, that the merger will produce such efficiencies, and that comparable efficiencies cannot be achieved through other means.

We do not believe an extended discussion of efficiencies is appropriate. Efficiencies are a by-product of vigorous competition. Hence, the principal focus of analysis should continue to be on maintaining competition.

Lookng beyond that focus may tend to justify anticompetitive effects based on theoretical and presumed efficiencies anticipated as a result of a proposed merger.

While generally supporting the FDIC's attempt to consider all of the costs and benefits of proposed mergers and to balance those factors in its ultimate public interest determination, DOJ stated its belief that the public would be better served if the statement described more clearly the conceptual approach the FDIC intends to use in the process. More specifically, the statement should clarify that all costs and all benefits will be considered.

We believe the statement as drafted is clear that all costs and benefits will be considered and weighed in making the judgment as to whether a proposed merger transaction may tend substantially to reduce competition. This includes for example, as DOJ suggested, the fact that a merger that will produce anticompetitive effects only in a product market constituting a small portion of merging firms' business does not warrant disregard of the merger's adverse effect on consumers of that product. Conversely, if a merger produces benefits in a product market that constitutes only a small portion of the merging firms' business, those benefits would also be weighed.

In the context of potential bank failures, DOJ has also suggested that a less anticompetitive merger that would be substantially more costly to the FIC imposes real costs which appropriately should be weighed. Consequently, the likelihood of additional costs to the FDIC should not automatically justify approval of an anticompetitive merger because the costs to the public that arise from reduced competition may well exceed the costs to the FDIC.

We agree with DOJ's observation and have qualified the relevant language to make clear that all costs, including those costs to the public resulting from reduced competition, where such costs can be identified and quantified, will be considered in deciding whether the overall benefits to the public, including the FDIC, should override the anticompetitive effects of a proposed merger.

Finally, DOJ suggested that improved services to the public as a result of a merger should be considered by the FDIC but not automatically be accorded "substantial weight." Some improvements may be insignificant, or might be achieveable through means other than an anticompetitive merger. In such cases, improved services should be accorded little or no weight.

We agree and have changed the relevant language to indicate that improved services to the public is but one of the elements in the costs/benefits equation in deciding the extent to which the public interest may be served by a proposed merger.

Notice is hereby given that after due consideration of all comments received, the proposed policy statement published earlier in the **Federal Register** at 53 FR 39803 has been revised as discussed above and with certain minor editorial corrections is formally adopted as follows:

FDIC Statement of Policy Bank Merger Transactions

A. Introduction

Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), popularly known as the Bank Merger Act, requires the prior written approval of the FDIC before any insured bank may merge, consolidate with or purchase the assets and assume the deposit liabilities of another insured bank if the acquiring, assuming or resulting bank is to be a nonmember bank (hereinafter referred to collectively as "mergers" or "merger transactions"). Similarly, FDIC approval is required whenever any insured bank seeks to merge with a noninsured bank or institution except where the resulting institution is a federal savings bank or FSLIC-insured institution.

The FDIC is prohibited by law from approving any merger that would tend to create or result in a monopoly, or which would further a combination, conspiracy or attempt to monopolize the business of banking in any part of the United States. Similarly, the FDIC may not approve a transaction whose effect in any section of the country may be substantially to lessen competition, or which in any other manner would be in restraint of trade. The FDIC may, however, approve any such transaction if it finds that the anticompetitive effects of the proposed transaction are clearly outweighed in the public interest by its probable effect in meeting the convenience and needs of the community to be served, for example, where approval of the merger may prevent the probable failure of one of the banks involved. In every case, the FDIC must also consider the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the community to be served.

In evaluating the various factors prescribed and making the necessary judgments on proposed merger transactions, it is the intent and purpose of the FDIC to foster and maintain a safe, efficient and competitive banking system that meets the needs of all elements of the communities served. With these broad goals in mind, the FDIC will apply the following more specific standards in evaluating and deciding proposed bank merger transactions.

B. Competitive Factors

1. *Geographic market.*—The FDIC will view the relevant geographic market as consisting of those areas in which offices of the merging institutions are located and from which the institutions derive the predominant portion of their loan, deposit or other business and where existing and potential customers of the merging and resulting institutions may reasonably be expected to find alternative sources of banking services. Where practical, the geographic market will be defined in terms of political subdivisions to facilitate statistical analysis.

2. *Product market.*—The FDIC will view the relevant product market as consisting of those particular banking services offered by the merging institutions or to be offered by the combined institution and the functional equivalent of such services offered by other types of competitors, including, as the case may be, other depository institutions, securities firms, finance companies, etc. For example, interest

bearing negotiable order of withdrawal ("NOW") accounts offered by savings institutions are in many respects the functional equivalent of demand deposit checking accounts. Similarly, captive finance companies of automobile manufacturers may compete directly with banks for automobile loans and mortgage bankers may compete directly for real estate loans.

3. *Substantial lessening of competition.*—In deciding whether the effect of a proposed merger transaction may be substantially to lessen competition, the FDIC will consider the extent of existing competition in the defined service offerings in the relevant geographic market, both between the merging institutions and from other providers offering similar or equivalent services, focusing particularly on the type and extent of competition that exists and that will be eliminated, reduced or enhanced by the proposed merger. For this purpose, the FDIC will consider the competitive impact of providers located outside the relevant geographic market where it is shown that they individually or collectively influence materially the nature, pricing or quality of services offered by providers operating within the defined geographic market. In making a judgment on the competitive effects of a proposed merger, the FDIC will accord relatively greater weight to those services that constitute the largest part of the businesses of the merging institutions, either in terms of number and volume of transactions, footings, contribution to net income, etc., using whatever analytical proxies may be available that reasonably reflect the dynamics of the market.

Initially, the FDIC will focus on the respective shares of the various participants in the relevant geographic market in the major service lines of the merging institutions, including especially their respective shares of total individual, partnership, and corporate ("IPC") deposits which may continue in many cases to serve as a rough proxy for overall share of the banking business in the relevant geographic market. For this purpose, the relative shares of savings and loan associations and other depository institutions with offices in the relevant geographic market will be considered unless their loan, deposit or other business varies markedly from that of the merging institutions.

Where it is clear, based on market share considerations alone, that the proposed merger will not significantly increase concentration in an unconcentrated market, the merger will be approved without further analysis (assuming prudential and other concerns are otherwise satisfied as set forth below). For purposes of assessing the degree of concentration in a market, a proposed merger transaction will normally be approved (absent objection from the Department of Justice) where the postmerger Herfindahl-Hirschman Index ("HHI") * in a relevant geographic market is 1,800 points or less or, if more than 1,800, would increase less than 200 points as a result of the merger. For purposes of this test, a reasonable approximation for the geographic market or markets consisting of one or more predefined areas, for example, counties, the Bureau of the Census Metropolitan Areas ("MSAs"), or Rand-McNally Metropolitan Areas ("RMAs"), may be used. In addition, calculation of the HHI may utilize, in the first instance, total individual-partnership-corporate ("IPC") deposits for commercial banks and thrifts where actual competition exists between the two types of institutions in the relevant geographic market approximation.

Where a proposed merger would fail the initial concentration test based on the HHI, the FDIC will consider more closely the various competitive dynamics at work in the market, taking into account a variety of factors that may be especially relevant and important in the particular circumstances. These factors may include the number, size, financial strength, quality of management and aggressiveness of the various participants in the market, and the likelihood of new participants entering the market based on its attractiveness in terms of population, wealth, income levels and economic growth, and any legal impediments to entry or expansion. The likelihood of new entrants creating a significant presence in the near term either by establishing an office *de nova* or generating a substantial volume of business from outside the market through agencies, electronic means, or the mail will also be weighed, particularly where there is evidence that the mere possibility of such entry tends to constrain the pricing and maintain the quality of services offered by the existing competitors in the market.

* The Herfindahl-Hirschman Index ("HHI") is an economic measure of market concentration and is used as the principal measure in the Department of Justice's Merger Guidelines. The HHI for a particular competitor in a geographic market is obtained by squaring the market share percentage for that competitor. The HHI for the market is the sum of the HHIs for all competitors in that geographic market. For example, the HHI for a market with a single competitor would be $100^2=10{,}000$; for a market with five competitors with equal market shares, the HHI would be: $20^2+20^2+20^2+20^2+20^2=2{,}000$.

Definite entry plans by specifically identified competitors will similarly be weighed.

In assessing the competitive effects, the FDIC will also consider the extent to which the proposed merger will likely create a stronger, more efficient institution able to compete more vigorously in the relevant geographic market.

4. *Public interest.* The FDIC will deny any proposed merger whose overall effect is likely to reduce existing competition substantially by limiting the service and price options available to the public in the relevant geographic market unless the anticompetitive effects of the proposed merger are clearly outweighed in the public interest by the convenience and needs of the community to be served. For this purpose, the applicant must show by clear and convincing evidence that any claimed public benefits will be both substantial and incremental and generally available to all seekers of banking services in the relevant geographic market. Moreover, it must be shown that the expected benefits cannot reasonably be achieved through other, less anticompetitive means.

Where a merger is the only reasonable alternative to the probable failure of a bank, FDIC may approve an otherwise anticompetitive merger. For this purpose, a less anticompetitive alternative that is substantially more costly to the FDIC usually will not be considered unless the potential costs to the public of approving the anticompetitive merger are clearly greater than those likely to be saved by the FDIC.

C. Prudential Factors

The FDIC does not wish to create larger weak institutions nor debilitate existing institutions whose overall condition, including capital, management and earnings, are generally satisfactory. Consequently, apart from competitive considerations, the FDIC normally will not approve a proposed merger where the resulting institution will fail to meet existing capital standards, continue with weak or unsatisfactory management, or whose earnings prospects, both in terms of quantity and quality, are weak, suspect or doubtful. In assessing capital adequacy and earnings prospects, particular attention will be paid to the adequacy of the provision for loan losses. In assessing the quality of management, particular attention will be paid to the existence of any insider transactions and any inducement to any

officer, director, or employee to promote or encourage the merger.

D. Other Factors

The FDIC will also consider the extent to which the proposed merger is likely to improve service to the general public through such capabilities as higher lending limits, new or expanded services, reduced prices, increased convenience in utilizing the services and facilities of the resulting institution, etc. In assessing the convenience and needs of the community served, the FDIC, as required by the Community Reinvestment Act, will also note and consider the lending and investment records of the merging institutions in their local communities as defined in their Community Reinvestment Act statements. Where these records are weak, appropriate commitments or efforts at improvement will be required.

The FDIC also expects full compliance with the National Environmental Policy Act and National Historic Preservation Act, as these laws may apply in the circumstances of particular cases.

Applicants for consent to merge may find additional guidance in the reported bases for FDIC approval or denial in prior merger cases compiled in the FDIC's annual "Merger Decisions" reports.

E. Procedural Matters

1. *Application filing.* Insured depository institutions seeking the FDIC's approval of a merger transaction may obtain forms and instructions from the FDIC regional office (Division of Bank Supervision) for the region in which the head office of the resulting institution will be located. Completed applications and other pertinent materials, if any, should be filed with the regional director at that office. The application and any related materials will be reviewed by regional office staff for compliance with applicable laws and the rules and regulations of the FDIC. When all necessary information has been received, the application will be processed and a decision rendered by the regional director pursuant to the delegations of authority set forth in Part 303 of the FDIC's rules and regulations (12 CFR Part 303) or the application will be forwarded to the Washington Office for processing and decision.

2. *Publication of notice.* The FDIC will not take final action on a merger application until notice of the proposed transaction is published in a newspaper or newspapers of general circulation in accordance with the requirements of paragraph (3) of section 18(c) of the Federal Deposit Insurance Act. The applicant will be furnished a suggested form of notice and advised of the appropriate intervals and number of times required for such publication. The applicant must furnish a certificate of publication of the notice to the regional director following compliance with the publication requirement. (Refer to Part 303 of the FDIC's rules and regulations (12 CFR part 303).)

3. *Reports on competitive factors.* As required by law, the FDIC will request reports on the competitive factors involved in a proposed merger from the Attorney General, the Comptroller of the Currency, and the Board of Governors of the Federal Reserve System. The FDIC will also request similar reports from the Director of the Office of Thrift Supervision. These reports must ordinarily be furnished within 30 days and the applicant will, if it so requests, be given an opportunity to submit comments to the FDIC on the contents of the competitive factors reports.

4. *Notification to the Attorney General.* The FDIC will immediately notify the Attorney General of its approval of any merger transaction where the resulting bank is a state nonmember insured bank. Unless an emergency exists requiring expeditious action, the transaction may not be consummated until the thirtieth calendar day after the date of the FDIC's approval.

5. *Legal fees and expenses.* An applicant should review carefully the FDIC's statement of policy on "Applications, Legal Fees and Other Expenses" for possible applicability to the proposed merger transaction.

By order of Board of Directors this 12th day of September, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-22432 Filed 9-21-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL RESERVE SYSTEM

Citizens Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a wirtten presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 13, 1989.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Citizens Corporation, Eastman, Georgia; to acquire 100 percent of the voting shares of Bank South, Mount Vernon, formerly Mount Vernon Bank, Mount Vernon, Georgia.

2. 1st AmBanc, Inc., Destin, Florida; to become a bank holding company by acquiring 80 percent of the voting shares of 1st American Bank of Walton County, Inc., Destin, Florida.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Financial Enterprises, Inc., Clinton, Missouri; to acquire 6.4 percent of the voting shares of Buerge Bancshares, Inc., Joplin, Missouri, and thereby indirectly acquire First State Bank of Joplin, Joplin, Missouri, and First Bank of Butler, Butler, Missouri. Comments on this application must be received by October 6, 1989.

2. Shidler Bancshares, Inc., Shidler, Oklahoma; to acquire at least 80 percent of the voting shares of Security Bank and Trust Company of Ponca City, Ponca City, Oklahoma.

Board of Governors of the Federal Reserve System, September 18, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-22393 Filed 9-21-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090589 AND 091589

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Merrill Lynch & Co., Inc., Donnkenny Holding Company., Donnkenny Holding Company	89-2538	09/05/89
Geodyne Resources, Inc., Mesa Ltd. Partnership, Mesa Ltd. Partnership	89-2587	09/05/89
C. Frederick Wehba, TW Holdings, Inc., TW Services, Inc., (ROWE Group of companies)	89-2608	09/05/89
Jungfrau Trust, Furnishings 2000, Inc., Furnishings 2000, Inc.	89-2613	09/05/89
Chugai Pharmaceutical Co., Ltd., Cook Group Incorporated, Cook Imaging Corporation	89-2389	09/06/89
Anglo Group PLC, B.A.T. Industries p.l.c., BATUS Inc.	89-2424	09/06/89
Conder Group PLC, Beaman Corporation, Beaman Corporation	89-2437	09/06/89
International Business Machines Corporation, American Management Systems, Incorporated, American Management Systems, Incorporated	89-2450	09/06/89
Donald J. Trump, Tiffany & Co., Tiffany & Co.	89-2541	09/06/89
Exxon Corporation, Mobil Foundation, Inc., Mobil Foundation, Inc.	89-2592	09/06/89
The Dun & Bradstreet Corporation, Commercial Credit Group, Inc., American Credit Idemnity Company	88-2301	09/06/89
Ramada Inc., Herbert Barness, Barbun Corporation and B & B Limited Partnership	89-2499	09/07/89
RSI Corporation, Delta Woodside Industries, Inc., Delta Woodside Industries, Inc.	89-2509	09/07/89
The Prudential Insurance Company of America, Merrill Lynch & Co., Inc., Merrill Lynch Mortgage Corp. & Fine Homes International	89-2510	09/07/89
Vista III, L.P., NEOAX, Inc., Superior Air Parts, Inc	89-2529	09/07/89
Sony Corporation, Materials Research Corporation, Materials Research Corporation	89-2572	09/07/89
Darwin Deason, Dataplex Corporation, Dataplex Corporation	89-2575	09/07/89
United Newspapers public limited company, Barron E. Ressler, Pacific Media Group, Inc., Community Distribution Systems	89-2589	09/07/89
Dumez S.A., Mr. Marvin Graybow, Graybow-Daniels Company & Graybow Aire, Inc.	89-2618	09/07/89
G E I International PLC, Anthony T. Randazzo, Alloy & Stainless, Inc.	89-2489	09/08/89
General Electric Company, Leucadia National Corporation, BRAE Corporation	89-2551	09/08/89
Hartford Energy Corp., Lonrho Plc, Hondo Oil & Gas Company	89-2599	09/08/89
Reebok International Ltd. CML Group, Inc., Boston Whaler, Inc.	89-2601	09/08/89
Nippon Suisan Kaisha, Ltd., Arctic Alaska Fisheries Corporation, Arctic Alaska Fisheries Corporation	89-2468	09/10/89
Midlantic Corporation, First Fidelity Bancorporation, First Fidelity Bancorporation	89-2481	09/11/89
Chrysler Corporation, XTRA Corporation, XTRA Inc.	89-2487	09/11/89
Lee M. Bass, Avantek, Inc., Avantek, Inc.	89-2500	09/11/89
Sid R. Bass, Avantek, Inc., Avantek, Inc.	89-2501	09/11/89
Daniel J. Sullivan, Norman Weinstein, General Textiles	89-2507	09/11/89
JMB Group Trust V, The Stoneson Development Corporation, The Stoneson Development Corporation	89-2512	09/11/89
BankAmerica Corporation, Wells Fargo & Company, Newco	89-2591	09/11/89
Maxwell Communication Corporation plc, Maxwell Communication Corporation plc, Keated Ltd.	89-2622	09/11/89
John W. Kluge, c/o Metromedia Company, USACafes, L.P., USACafes, L.P.	89-2627	09/11/89
Maxwell Communication Corporation plc, S. J. David Corsan, Keated Ltd.	89-2628	09/11/89
Maxwell Communication Corporation plc, Ronald Middleton, Keated Ltd.	89-2629	09/11/89
Western Mining Corporation Holdings Limited, Chevron Corporation, Chevron U.S.A. Inc.	89-2632	09/11/89
Jannock Limited, Tate & Lyle, plc, Heartland Building Products Inc.	89-2635	09/11/89
Aris Corporation, The Trump Capital Corporation, Lamonts Apparel, Inc.	89-2642	09/11/89
Oryx Energy Company, The Broken Hill Proprietary Company Limited, BHP Petroleum Company, Inc.	89-2644	09/11/89
Merrill Lynch & Co., Inc., Merrill Lynch & Co., Inc., Fine Homes International, L.P.	89-2517	09/12/89
American Distributors PLC f/k/a Sapphire Petroleum PLC, Mr. Jay Martin, Capital Cigar and Tobacco Company, Incorporated	89-2579	09/12/89
Wasserstein Perella Partners, L.P., Isosceles PLC, Isosceles PLC	89-2595	09/12/89
Federal Paper Board Company, Inc., Richard E. and Joan S. Allen, Imperial Cup Corporation	89-2602	09/12/89
E. Erwin Maddrey, II, RSI Corporation, RSI Corporation	89-2614	09/12/89
Bettis C. Rainsford, RSI Corporation, RSI Corporation	89-2615	09/12/89
Inter Media Partners, Jack Kent Cooke, Cooke CableVision Inc.	89-2614	09/12/89
CRI Insured Mortgage Investments LP I, CRI Insured Mortgage Investments II, Inc. & LP III, CRI Insured Mortgage Investments II, Inc. & LP III	89-2624	09/12/89
CRI Insured Mortgage Investments II, Inc., CRI Insured Mortgage Investments LP I & III, CRI Insured Mortgage Investments LP I & III	89-2625	09/12/89
CRI Insured Mortgage Investments LP III, CRI Insured Mortgage Investments LP I & II, Inc., CRI Insured Mortgage Investments LP I & II, Inc.	89-2626	09/12/89
Equity Holding Limited, The Equitable Life Assurance Society of the U.S., Amerace Corporation	89-2646	09/12/89
Thyssen-Bornemisza Continuity Trust, Thyssen-Bornemisza Continuity Trust, IHS Limited Partnership	89-2654	09/12/89
First Financial Management Corporation, Virginia Healthcare Foundation, The Computer Company	89-2655	09/12/89
General Motors Corporation, First Bank System, Inc., FBS Mortgage Corporation	89-2657	09/12/89
Brascan Limited, M. A. Hanna Company, M. A. Hanna Company	89-2569	09/13/89
John Hess, Amerada Hess Corporation, Amerada Hess Corporation	89-2584	09/13/89
Kilsby-Roberts Holding Co., Republic Supply Holding Co., Republic Supply Holding Co.	89-2643	09/13/89
Citation Investment Trust, Amoco Corporation, Amoco Production Company	89-2653	09/13/89
Household International, Inc., CalFed Inc., California Federal Bank	89-2664	09/13/89
Advanced Telecommunications Corporation, Francesco Galesi, Galesi Telecommunications Inc.	89-2503	09/14/89
Francesco Galesi, The Galesi Group, Advanced Telecommunications Corporation, Advanced Telecommunications Corporation	89-2504	09/14/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 090589 AND 091589—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
E.I. duPont deNemours & Company, ImagiTex, Inc., ImagiTex, Inc.	89-2679	09/14/89
VWR Corporation, ARTRA Group Incorporated, Sargent-Welch Scientific Company	89-2479	09/15/89
W. Don Cornwell, Pulitzer Voting Trust, WPTA-TV	89-2621	09/15/89
Marshalls Plc, Alfons Schmitt, Paver Systems, Inc	89-2670	09/15/89
Fujisawa Pharmaceutical Co., Ltd., Lyphomed, Inc., Lyphomed, Inc.	89-2675	09/15/89
The Southern Company, Oglethorpe Power Corporation, Oglethorpe Power Corporation	89-2678	09/15/89
Drummond Company, Inc., Robert C. Gibson, Imperial-Pacific (U.S.), Inc.	89-2693	09/15/89

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Federal Trade Commission, Contact Representative, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326-3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-22443 Filed 9-21-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). Following are packages submitted to OMB since the last publication on September 15, 1989. (Call the Reports Clearance Officer on 202-252-5604 for copies of package.)

Advance Planning Document for a Computerized Child Support Enforcement System—0970-0045. The Advance Planning Document (ADP) requirements set forth in the regulation, enable OCSE to determine whether the system improves the efficiency of the administration of the State IV-D program. These requirements also assist OCSE in reviewing any proposed system a State is developing for Federal Financial Participation as required by the Social Security Act. Respondents: State or local governments; Number of Respondents: 53; Frequency of Response: 1; Average Burden per Response: 589; Total Burden Hours 31,200.

Maintenance of Information Requirements for a Computerized Child Support Enforcement System—0970-0046. The maintenance of this information via an automated system is needed and used to assure that management has the opportunity to administer the State IV-D program in an effective and efficient manner. Number of Recordkeepers: 15; Annual Hours Per Recordkeeper: 4,410; Total Recordkeeping Hours: 66,150. The recordkeeping retention period is 3 years.

OMB Desk Clearance Officer: Justin Kopca.

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 725 17th Street, NW., Washington, DC 20503.

Dated: September 14, 1989.

Sylvia E. Vela,

Deputy Associate Administrator for Management and Information Systems.

[FR Doc. 89-22236 Filed 9-21-89; 8:45 am]

BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89N-0348]

Guidelines for the Scientific Review of Enteral Food Products for Special Medical Purposes; Announcement of Study; Request for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Life Sciences Research Office (LSRO) of the Federation of American Societies for Experimental Biology (FASEB) is conducting a study to summarize scientific rationale for the use of certain types of medical foods and to develop guidelines for evaluating studies designed to substantiate the safety and suitability of medical foods for their intended purposes. FASEB is inviting submission of scientific data and information on the safety and suitability of using certain enteral food products for their intended purposes. Interested persons and organizations with questions regarding this study are invited to communicate with the LSRO contact person listed below.

DATES: Scientific data and information should be received by Friday, December 29, 1989.

ADDRESSES: Scientific data and information should be submitted to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and the Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814. Two copies of the scientific data and information should be submitted to each office.

FOR FURTHER INFORMATION CONTACT: Kenneth D. Fisher, Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20814, 301-530-7030.

SUPPLEMENTARY INFORMATION: FDA has a contract (223-88-2124) with FASEB concerning the analysis of scientific issues in food and cosmetic safety. The objective of this contract is to provide information to FDA on general and specific issues of scientific fact associated with food and cosmetic safety.

FDA is announcing that it has requested LSRO of FASEB, as a task under the contract, to prepare a state-of-the-art summary of the scientific rationale for the use of certain categories of enteral food preparations and to develop guidelines for evaluating studies useful in substantiating the safety and suitability of medical foods for their intended purposes. The types of medical foods to be included in the study are those products formulated for persons with end-stage renal disease, preparations concerning branched-chain amino acids formulated for the dietary management of hepatic disease,

products formulated for persons with pulmonary diseases, products useful in dietary management of trauma or other hypermetabolic conditions, and other product categories as designated by FDA.

This notice invites submission of scientific data and information that should be considered in developing criteria for evaluating the safety and suitability of enteral food products for special medical purposes. Two copies of any scientific data and information should be submitted to both FDA's Dockets Management Branch and the Life Sciences Research Office of FASEB (address above). The deadline for receipt of such submissions is December 29, 1989. Pursuant to its contract with FDA, FASEB will provide the agency with a scientific report on these issues on or before August 31, 1990.

Dated: September 19, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-22396 Filed 9-21-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Final Special Consideration and Final Funding Priority for Nursing Special Project Grants Continuing Education Offering, Pediatric Emergency Care

The Health Resources and Services Administration announces the final special consideration and funding priority for grants for Nursing Continuing Education Offerings centered on pediatric emergency care authorized by section 820(a), title VIII of the Public Health Service Act.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the program as well as provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Purpose 1 under section 820(a) provides that the Secretary of Health and Human Services make grants to public and nonprofit schools of nursing and other nonprofit private entities to improve the quality and availability of nurse training through projects which provide continuing education to practicing professional nurses. On May 24, 1989, a Federal Register announcement was published covering another Fiscal Year 1990 competitive grant cycle for Nursing Special Project Grants.

Applications will be available to eligible entities for projects which will enhance the knowledge, skills and attitudes of professional nurses working in emergency care settings. This announcement is limited to particular projects focused only on pediatric emergency care.

To receive support, applicants must meet the requirements of 42 CFR part 57, subpart T.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve;
2. The potential effectiveness of the proposed project in carrying out such purposes;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The adequacy of the facilities and resources available to the applicant to carry out the proposed project;
5. The qualifications of the project director and proposed staff;
6. The reasonableness of the proposed budget in relation to the proposed project; and
7. The potential of the project to continue on a self-sustaining basis after the period of grant support.

A proposed special consideration and proposed funding priority were published in the Federal Register of July 5, 1989, (FR 54 28123) for public comment. No comments were received during the 30 day comment period. Therefore, the special consideration and funding priority as proposed will be retained as follows:

Final Special Consideration for Fiscal Year 1990

Section 820(a)(1)

Special consideration will be given to projects which provide expansion of current curriculum or development and implementation of new curriculum concerning the prevention of HIV infection and the care of HIV infection-related diseases.

Final Funding Priority for Fiscal Year 1990

A funding priority will be given to applications for continuing education programs in the area of Quality Assurance/Risk Management for nurses.

This program is listed at 13.359 in the *Catalog of Federal Domestic Assistance* and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

Dated: September 18, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-22397 Filed 9-21-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on September 8, 1989.

(Call PHS Reports Clearance Officer on 202-245-2100 for copies of package)

1. The Intervention Activities Surveys for the Community Intervention Trial for Smoking Cessation (COMMIT)—0925-0346—The National Cancer Institute (NCI) has designed the Community Intervention Trial for Smoking Cessation (COMMIT). This large-scale trial will test community-based strategies to produce long-term cessation among smokers, particularly heavy smokers. Clearance is herein being requested for the pretesting and fielding of surveys to assess the impact of the intervention activities on health care providers, worksites, schools and religious organizations. Respondents: Non-profit institutions, businesses or other for-profit, small businesses.

	Number of respondents	Number of hours per response	Number of responses per respondent
Health Care Providers Office Survey	238	0.075	1
Health Care Providers Professional Survey	717	.067	1
Worksites Survey	430	.325	1
Religious Organization Study	200	.308	1

Estimated Annual Burden..... 268

2. Methadone in Maintenance and Detoxification; Joint Revision of Conditions for Use—0910–0140—These regulations and forms provide the mechanism for practitioners to request and receive approval for a narcotic treatment program and to facilitate the reporting and recordkeeping requirements improved by 21 CFR 291.505. Respondents: Businesses or other for-profit, small businesses or organizations, non-profit institutions.

	Number of respondents	Number of hours per response	Number of responses per respondent
FDA 2632, 21 CFR 291.505(c)(4) *Reporting*	65	1	1
FDA 2633, 21 CFR 291.505(c)(4) *Reporting*	65	1	1
FDA 2636, Hospital Request for Methadone Detoxification Treatment	40	.17	1
21 CFR 291.505, (d)(6)(v)(D)	100	.25	1

Estimated Annual Burden..... 162

3. Pretest of the 1990 Longitudinal Followup to the 1988 National Maternal and Infant Health Survey—NEW—This pretest will examine the forms and procedures in preparation for the main Longitudinal Followup Survey beginning in 1990. The pretest involves personal and/or telephone reinterviews with 485 women who participated in the National Maternal and Infant Health Survey Pretest in 1987. For women with live births, their child's pediatricians and any hospitals where the children were seen will be mailed questionnaires. Repondents: Individuals or households, businesses or other for-profit, non-profit institutions.

	Number of respondents	Number of hours per response	Number of responses per respondent
Mother's questionnaire	489	.55	1
Provider questionnaire	250	.39	1

Estimated Annual Burden..... 366 hours

4. Pilot Study of the Immunosuppressive Effects of Psychological Job Stress—NEW—This pilot study to be conducted by the National Institute for Occupational Safety and Health will examine the potential immunosuppressive and Health will examine the potential immunosuppressive effects of psychological job stress. The objectives of the study are to examine the potential for covariation between measures of job stress and measures of immune function, and to provide the necessary groundwork for more definitive efforts in this area. Respondents: Individuals or households: Number of Respondents: 40; Number of Responses per Respondent: 12; Average Burden per Response: .7 hours; Estimated Annual Burden: 336 hours.

5. Feasibility of Studying Hospices and Home Health Agencies—0920–0236—The purpose of this study is to develop and field test data sets, data collection procedures, and instruments for obtaining information about home health agencies and hospices and about their clients. The data are needed by the long-term care community to assist in setting standards, planning, and assessing the need for long-term services. Respondents: Businesses or other for-profit, non-profit institutions; Number of Respondents: 192; Number of Responses per Respondent: 1; Average Burden per Response: 2.9 hours; Estimated Annual Burden: 560 hours.

6. 42 CFR 50 subpart B: Sterilization of Persons in Federally Assisted Family Planning Projects—0937–0166—These regulations and informed consent procedures are associated with federally-funded sterilization services. Selected consent forms are audited during site-visits and program reviews by Federal programs staff to ensure compliance with regulations and protection of of the rights of individuals undergoing sterilization. Respondents: Individuals or households, State or local governments, non-profit institutions.

	Number of respondents	Number of hours per response	Number of responses per respondent
42 CFR 50.204, *Informed Consent*	4,000	1	10
42 CFR 50.205, 50.208, *Recordkeeping*	4,00	2.5	1

Estimated Annual Burden .....50,000 hours

7. International Research Fellowship Award Application—0925–0010—The IRF award provides support for biomedical, behavioral, and public health related research to selected individuals (foreign biomedical scientists). Awards are made to individual applicants for specific research proposals, selected as a result of international competition. This series of forms is used by individuals to apply for, extend, and terminate an IRF award. Respondents: Individuals, State or local governments, non-profit institutions; Number of Respondents: 1,360; Number of Responses per Respondent: 1; Average Burden per Response: 1.877 hours; Estimated Annual Burden: 2,553 hours. OMB Desk Officer: Shannah Koss-McCallum

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Dated: September 18, 1989.

James M. Friedman,

Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89–22403 Filed 9–21–89; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–89–1917; FR–2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

EFFECTIVE DATE: September 22, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755–9075; TDD number for the hearing- and speech-impaired (202) 426–0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Dated: September 18, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 89–22352 Filed 9–21–89; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–010–4410–08: 178–010]

Arizona Strip District Advisory Council; Field Tour

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of field tour.

SUMMARY: A field tour by the Arizona Strip District Advisory Council will occur November 1–2, 1989. The Council will leave the Arizona Strip District Office St. George, Utah at 1 p.m. on November 1. They will travel to the Mt. Trumbull BLM administrative site where they will spend the night, returning to St. George on the following day. Various stops will be made to review proposed decision in the Draft Arizona Strip District Resource Management Plan and other resource issues.

FOR FURTHER INFORMATION CONTACT: G. William Lamb, District Manager, Arizona Strip District, 390 North 3050 East, St. George, Utah 84770 (Phone 801/673–3545).

SUPPLEMENTAL INFORMATION: The tour is open to the public, but the public must provide their own transportation. Interested persons may make oral statements to the Council any time along the tour or file written statements for the Council's consideration.

Dated: September 13, 1989.

G. William Lamb,

Arizona Strip District Manager.

[FR Doc. 89–22365 Filed 9–21–89; 8:45 am]

BILLING CODE 4310–32–M

[ID–010–09–4320–02]

Boise District Grazing Advisory Board; Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District Grazing Advisory Board will meet October 12 to discuss range improvement funding proposals for Fiscal Year 1990. A public comment period will be held from 2:00 to 3:00 p.m.

DATE: The meeting will be held Thursday, October 12 beginning at 9:00 a.m. in the conference room of the Boise District Office.

ADDRESS: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Fred Schley, BLM Boise District (208) 334–9303.

Dated: September 14, 1989.

David B. Vail,

Acting District Manager.

[FR Doc. 89–22366 Filed 9–21–89; 8:45 am]

BILLING CODE 4310–GG–M

[CA–060–09–4410–4–ADV9]

California Desert District Advisory Council; Meeting

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will meet in formal session Thursday, October 5, 1989, from 1:00 p.m. to 5:00 p.m., and Saturday, October 7, 1989, from 9:00 a.m. to 1:30 p.m., in the Baker Community Hall in Baker, California. On Friday, October 6, from 7:30 p.m. to 9:30 p.m., the Council will conduct an informal workshop regarding tourism and public outreach in the California Desert District at the main building of the Desert Studies Center, Soda Springs, California.

During the morning of Thursday, October 5, and all day on Friday, October 6, Council members will participate in field trips. On Thursday, the Council will tour the area proposed for expansion of the U.S. Army's National Training Center at Fort Irwin. On Friday, the Council will visit the East Mojave National Scenic Area, including the site of the proposed Castle Mountain Mine. Members of the public may follow the Council on these field trips, but will have to furnish their own transportation, food, and drink.

Agenda items for the formal meetings will include:

—A status report on BLM's consultation with the U.S. Fish and Wildlife Service regarding proposed activities that may impact the endangered desert tortoise;
—A discussion of the District's Fiscal Year 1990 budget and priorities;
—An update on Land and Water Conservation Fund acquisitions within the District;
—An update on the Land Tenure Adjustment Program;
—An update on wilderness study are rehabilitation;
—Presentation of the 1988 California Desert Conservation Area Plan Amendments Record of Decision; and
—Discussion and Council recommendations regarding the 1989 California Desert Conservation Area Plan Amendments.

All formal Council meetings are open to the public, with time allocated for public comments, such time made available by the Council Chairman during presentations of various agenda items.

Written comments may be filed in advance of the meeting with the California Desert District Advisory Council Chairman, Mr. David Fisher, c/o Bureau of Land Management, Public Affairs Office, 1695 Spruce Street, Riverside, California 92507. Written comments are also accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

FOR FURTHER INFORMATION AND MEETING CONFIRMATION: Contact the Bureau of Land Management, California Desert District, Public Affairs Office, 1695 Spruce Street, Riverside, California 92507; (714) 351–6383.

Dated: September 15, 1989.

Gerald E. Hillier,

District Manager.

[FR Doc. 89–22426 Filed 9–21–89; 8:45 am]

BILLING CODE 4310–40–M

[NM–030–09–4333–10]

Designation Order NM–03–9001; Supersedes (in part) Designation Orders NM–030–8502 and NM–030–8002

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of New Mexico off-road vehicle designations.

SUMMARY: Notice is hereby given relating to the use of off-road vehicles on public land under administration of the Bureau of Land Management (BLM). The area known as the Organ Mountains Coordinated Resource Management Area (also described as the proposed Organ Mountains National Conservation Area) is hereby designated as limited to designated roads and trails. The affected area is within Dona Ana County, New Mexico in the BLM Mimbres Resource Area. The area, which includes public land in the Organ and Franklin Moutains, is identified with signs and maps.

EFFECTIVE DATE: This designation is effective September 22, 1989.

ADDRESSES: An environmental assessment describing the impacts of these designations is available for inspection at the BLM, Mimbres Resource Area, 1800 Marquess, Las Cruces, New Mexico, 88005.

FOR FURTHER INFORMATION CONTACT: Mark Hakkila, Natural Resource Specialist, Mimbres Resource Area at (505) 525-8228.

SUPPLEMENTARY INFORMATION: This notice is in accordance with the authority and requirements of Executive Orders 11644 and 11898, and regulations contained in 43 CFR part 8340. The designation is a result of resource management decisions made in the 1989 Organ Mountains Coordinated Resource Management Plan. The designation will remain in effect until rescinded or modified by the authorized officer. Under 43 CFR 4.21, an appeal may be filed within 30 days with the Interior Board of Land Appeals.

Dated: September 15, 1989.

H. James Fox,

District Manager.

[FR Doc. 89-22367 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-FB-M

[AZ-020-9-4212-13; A-18908A]

Realty Action; Exchange of Public Lands, Yavapai County, AZ

The following described public lands are being considered for exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

Gila and Salt River Meridian, Arizona

T. 13 N., R. 4 W.,
- Sec. 24, all;
- Sec. 25, all;
- Sec. 26, all exclusive of patented millsite claims
- Sec. 27, all;
- Sec. 28, N½, SE¼.

Comprising 3,020 acres of public land.

In exchange for these lands the Federal government will acquire non-Federal land from Phelps Dodge Corporation, located within the Prescott, Coconino and Kaibab National Forests.

The exchange proposal involves the surface and mineral estate of the public land with the exception of oil and gas.

Purpose of the exchange is to acquire non-Federal land located within the boundaries of the previously listed National Forests.

Publication of this notice in the **Federal Register** will segregate the public lands described herein to the extent they will not be subject to appropriation under the public land laws, including the mining laws. As set forth in 43 CFR 2201.1(b), any subsequently tendered application, allowance of which is discretionary, shall not be acceptd, shall not be considered as filed and shall be returned to the applicant. This segregative effect shall terminate upon issuance of patent to such lands, upon publication in the **Federal Register** of a termination of the segregation, or two years from date of this publication, whichever occurs first.

ADDRESS: For a period of 45 days, interested parties may submit comments to: Bureau of Land Management, District Manager, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

Dated: September 15, 1989.

Henri R. Bisson,

District Manager.

[FR Doc. 89-22400 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-32-M

[ID-943-08-4212-12; IDI-25401]

Issuance of Land Exchange Conveyance Document; ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Exchange of public and state lands.

SUMMARY: The United States has issued an exchange conveyance document to the State of Idaho, for the following-described lands under section 206 of the Federal Land Policy and Management Act of 1976:

Boise Meridian, Idaho

T. 1 N., R. 32 E.,
- Sec. 23, E½W½ and W½W¼SE¼;
- Sec. 26, NE¼NW¼, NE¼SE¼ and S½ SE¼;
- Sec. 34, SE¼SE¼;
- Sec. 35, E½ and SW¼.

T. 1 S., R. 32 E.,
- Sec. 1, lots 1 and 2, N½SE¼ and SE¼SE¼;
- Sec. 2, lots 1 and 2;
- Sec. 12, NE¼NE¼;
- Sec. 13, S½NE¼ and SE¼SE¼.

T. 1 N., R. 33 E.,
- Sec. 33, all;
- Sec. 34, N½, SW¼, N½SE¼ and SW¼ SE¼.

T. 1 S., R. 33 E.,
- Sec. 1, lots 1, 2 and 3, NE¼SW¼ and SE¼;
- Sec. 2, lot 4 and W½SW¼;
- Sec. 3, lots 1, 2, 3, and 4 and S½;
- Sec. 4, lots 1, 2, 3 and 4 and E½SW¼ and SE¼;
- Sec. 5, lots 1, 2, 3 and 4 and N½SW¼;
- Sec. 6, lots 1, 2, 3, 4, 5 and 6, E½SW¼ and SE¼;
- Sec. 7, lots 1, 2, 3 and 4, NE¼, E½NW¼, E½SW¼ and SE¼;
- Sec. 8, all;
- Sec. 9, E½NE¼, W½SW¼ and SE¼;
- Sec. 10, NW¼NE¼, NE¼NW¼, NE¼ NW¼NW¼NW¼, S½NW¼NW¼ NW¼, NE¼NW¼NW¼, S½NW¼ NW¼, SW¼NW¼ and W½SW¼;
- Sec. 18, lots 1, 2, 3 and 4, N½NE¼ and E½ W½;
- Sec. 19, lots 1, 2, 3 and 4, E½NW¼, SW¼ NE¼ and NE¼SW¼.

T. 1 S., R. 34 E.,
- Sec. 2, lots 1 and 2;
- Sec. 3, lots 1, 2, 3, and 4 and S½;
- Sec. 4, lots 1, 2, 3 and 4;
- Sec. 5, lots 1, 2, 3 and 4;
- Sec. 6, lots 1, 2, 3, 4, 5 and 6, N½SE¼;
- Sec. 7, SE¼NW¼, E½SW¼ and SE¼;
- Sec. 8, all;
- Sec. 9, all;
- Sec. 11, NW¼ and N½S½;
- Sec. 13, SW¼;
- Sec. 14, S½;
- Sec. 15, all;
- Sec. 17, all;
- Sec. 18, lot 1, NE¼, E½NW¼ and N½ SE¼;
- Sec. 20, all;
- Sec. 21, N½;
- Sec. 22, N½ and E½SE¼;
- Sec. 23, all;
- Sec. 24, SW¼NW¼;
- Sec. 26, N½NE¼ and NE¼NW¼;
- Sec. 27, NE¼NE¼;
- Sec. 29, NW¼NW¼;
- Sec. 30, N½NE¼.

Comprising 14,232.52 acres of public land.

In exchange for these lands, the United States acquired the following-described lands:

Boise Meridian, Idaho

T. 4 N., R. 24 E.,
- Sec. 36, all.

T. 3 S., R. 27 E.,
- Sec. 36, all.

T. 4 S., R. 27 E.,
- Sec. 16, all.
- Sec. 36, all.

T. 5 S., R. 27 E.,
- Sec. 16, all.

T. 1 S., R. 28 E.,
- Sec. 36, all.

T. 2 S., R. 28 E.,
- Sec. 36, all.

T. 5 S., R. 28 E.,
- Sec. 36, all.

T. 2 S., R. 29 E.,

Sec. 16, all;
Sec. 36, all.
T. 3 S., R. 29 E.,
Sec. 16, all.
T. 9 N., R. 29 E.,
Sec. 36, all.
T. 10 N., R. 29 E.,
Sec. 16, all.
T. 2 S., R. 30 E.,
Sec. 16, all;
Sec. 36, all.
T. 6 N., R. 30 E.,
Sec. 16, all.
T. 7 N., R. 30 E.,
Sec. 16, E½.
T. 8 N., R. 30 E.,
Sec. 16, all.
T. 9 N., R. 30 E.,
Sec. 36, all.
T. 8 N., R. 31 E.,
Sec. 16, lots 1, 2, 3, 4, 5, 6 and 7, NE¼, E½ NW¼, NE¼SW¼ and N½SE¼.
T. 9 N., R. 31 E.,
Sec. 36, lots 1, 2, 3 and 4, N½ and N½S½.
T. 1 N., R. 34 E.,
Sec. 36, all.
T. 2 N., R. 34 E.,
Sec. 16, all;
Sec. 36, all.
T. 1 N., R. 35 E.,
Sec. 36, E½, NE¼NW¼ and S½NW¼.
T. 1 S., R. 35 E.,
Sec. 16, W½.
T. 2 N., R. 35 E.,
Sec. 16, all;
Sec. 36, all.
T. 1 N S., R. 36 E.,
Sec. 16, N½, NE¼SW¼, N½SE¼ and SE¼SE¼.
T. 1 S., R. 36 E.,
Sec. 16, W½NE¼, NW¼ and S½.

Comprising 18,055.80 acres of State land.

The purpose of the exchange was to consolidate public and state lands for better management. The public interest was well served through completion of this exchange.

The values of the public land and the State lands in the exchange were both appraised at $782,800.00 and $776,000.00 respectively.

Dated: September 15, 1989.

Duane E. Olsen,

Deputy State Director for Operations.

[FR Doc. 89-22401 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-GG-M

[MT-070-09-4050-91-47H: M-68142]

Realty Action; Recreation and Public Purposes (R&PP Act Classification; MT

AGENCY: Interior, Bureau of Land Management, Butte District.

SUMMARY: The following described public lands in Jefferson County, Montana have been examined and found suitable for lease and conveyance to Jefferson County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). Jefferson County plans to use the lands for a solid waste transfer site, county maintenance shop, a sand/gravel source, and public recreation.

Principal Meridian, Montana

T. 9 N., R. 3 W.,
Sec. 13, SW¼SW¼;
Sec. 14, Lot 1, S½SE¼/SE¼.

Containing 71.62 acres.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with the Headwaters Resource Management Plan and would be in the public interest.

The lease/patent when issued, will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals will be reserved to the United States.

4. Those rights granted under right-of-way grants M072711, M041246, and M20541.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act.

DATES: For a period of 45 days from the date of this notice, interested parties may submit comments to the Bureau of Land Management at the address shown below. Any adverse comments will be evaluated by the BLM, Montana State Director, who may sustain, vacate, or modify this realty action. In the absense of any objections this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the sale, including the environmental assessment/land report is available for review at the Butte District Office, P.O. Box 3388, 106 North Parkmont, Butte, Montana 59702.

Dated: September 14, 1989.

Orval L. Hadley,

Acting District Manager.

[FR Doc. 89-22402 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-DN-M

[NM-940-09-4214-11; NM NM 010925]

Proposed Continuation of Withdrawal and Reservation of Land; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes that a 159.32-acre withdrawal for the La Cueva Recreation Area, and a 144.52-acre withdrawal for the Juan Tabo Recreation Area continue for an additional 20 years. The land will remain closed to mining. The land was withdrawn from all forms of appropriation under the public land laws, but not from mineral leasing. The land will be opened to the operation of the public land laws and will remain open to mineral leasing.

DATE: Comments should be received by December 21, 1989.

ADDRESS: Comments should be sent to New Mexico State Director, BLM, P.O. Box 1449, Sant Fe, New Nexico 87504.

FOR FURTHER INFORMATION CONTACT: Clarence F. Hougland, BLM, New Mexico State Office, 505-988-6071.

The U.S. Department of Agriculture, Forest Service, proposes that the existing land withdrawal made by Public Land Order No. 1155 be continued for a period of 20 years for the La Cueva and the Juan Tabo Recreation Areas pursuant to Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751, 43 U.S.C. 174. The land is described as follows:

New Mexico Principal Meridian

Cibola National Forest, Sandia Ranger District, Juan Tabo Recreation Area

T. 11 N., R. 4 E.,
Sec. 2, lots 1, 2, 5 and 6, those portions lying outside the Sandia Mountain Wilderness Area (Pub. L. 95-237).
T. 12 N., R. 4 E.,
Sec. 35, S½SW¼SE¼, S½NE¼SW¼SE¼, S½N½NE¼SW¼SE¼, SW¼SE¼SE¼, S½NW¼SE¼SE¼, N½SE¼SE¼SE¼, and S½NE¼SE¼SE¼.

The area described contains 144.52 acres in Bernalillo and Sandoval Counties.

La Cueva Recreation Area

T. 11 N., R. 4 E.,
Sec. 2, N½SW¼SW¼, N½SE¼SW¼, SE¼SE¼SW¼, E½SW¼SE¼SE¼, E½W½, SW¼SE¼SW¼, SW¼SE¼, W½SE¼SE¼, NE¼SE¼SE¼, and W½SE¼SE¼SE¼.
Sec. 11, lot 11, E½W½NE¼NE¼, and W½E½NE¼NE¼.

The area described contains 159.32 acres in Bernalillo County.

The purpose of the withdrawal is for recreation purposes and the protection of substantial capital improvements on the Sandia Ranger District, Cibola National Forest. The withdrawal closed

the described land to surface entry and mining but not to mineral leasing. The land will remain closed to mining, will be opened to the public land laws, and will remain open to mineral leasing. No change in the the use of the land is proposed by this action.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the New Mexico State Director at the address indicated above.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resoures.

A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether the withdrawal will be continued, and if so, for how long. The final determination on the conintuation of the withdrawal will be published in the **Federal Register.** The existing withdrawal will continue until such final determination is made.

Monte G. Jordan,

Associate State Director.

[FR Doc. 89-22369 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-FB-M

National Park Service

Sleeping Bear Dunes National Lakeshore Advisory Commission; Correction of Address

A charter for the Sleeping Bear Dunes National Lakeshore Advisory Commission was filed with the appropriate Congressional committees and the Library of Congress on July 17, 1989. Notice is hereby given that the address as printed in that charter was incorrect.

The correct address for the Superintendent of the Sleeping Bear Dunes National Lakeshore, to whom the Advisory Commission reports, is: Superintendent, Sleeping Bear Dunes National Lakeshore, P.O. Box 277, 9922 Front Street (Highway M-72), Empire, Michigan 49630.

Herbert S. Cables Jr.,

Acting Director National Park Service.

[FR Doc. 89-22319 Filed 9-21-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731-TA-439 through 445 (Preliminary)]

Industrial Nitrocellulose From Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia

AGENCY: United States International Trade Commission.

ACTION: Institution of preliminary antidumping investigations and scheduling of a conference to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731-TA-439 (Preliminary) (Brazil), 731-TA-440 (Preliminary) (Japan), 731-TA-441 (Preliminary) (People's Republic of China), 731-TA-442 (Preliminary) (Republic of Korea), 731-TA-443 (Preliminary) United Kingdom, 731-TA-444 (Preliminary) (West Germany), and 731-TA-445 (Preliminary) (Yugoslavia) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, Japan, People's Republic of China, Republic of Korea, United Kingdom, West Germany, and Yugoslavia of industrial nitrocellulose, provided for in subheading 3912.20.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 445.2500 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete preliminary antidumping investigations in 45 days, or in these cases by November 3, 1989.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: September 19, 1989.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on September 19, 1989, by Hercules Incorporated, Wilmington, Delaware.

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the **Federal Register.** Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Public Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each public document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the public service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order and Business Proprietary Information Service List

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in these preliminary investigations to authorized applicants under a protective order, provided that the application be made not later than seven (7) days after the publication of this notice in the **Federal Register.** A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties

containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference

The Director of Operations of the Commission has scheduled a conference in connection with these investigations for 9:30 a.m. on October 11, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Tedford Briggs (202–252–1181) not later than October 5, 1989, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference.

Written Submissions

Any person may submit to the Commission on or before October 16, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigations, as provided in 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7). Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than October 19, 1989. Such additional comments must be limited to comments on business proprietary information received in or after the written briefs.

Authority

These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Issued: September 20, 1989.

Lisbeth K. Godley,

Acting Secretary.

[FR Doc. 89–22610 Filed 9–21–89; 8:45 am]

BILLING CODE 7020–02–M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement. The OMB and Agency identification numbers, if applicable. How often the recordkeeping/reporting requirement is needed. Who will be required to or asked to report or keep records. Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523–6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395–6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Assistant Secretary for Veterans' Employment and Training
Army Apprenticeship Follow-up Survey
Semi-annually
Individuals or households
550 respondents; 366 total hours; 20 mins. per response;

This request for clearance is for a data collection instrument to be used for a follow-up survey of recent Army separatees who participated in the Army Apprenticeship Program (AAP). The evaluation is necessary for determining the effectiveness of the AAP, how the separatees transition into the civilian workplace, and identifying alternatives to improve the existing program.

Extension

Pension and Welfare Benefits Administration
Final Regulation/Alternative Method of Compliance for Certain Simplified Employee Pensions, 2520.104–49
1210–0034
Annually
Businesses and other for-profit; Small Businesses or organizations
575 respondents; 48 hours; 5 minutes per response;

In keeping with section 408 of the Internal Revenue Code, the regulation provides an alternative type of reporting and disclosure arrangement for Simplified Employee Pensions (SEPS) that is easier to establish and administer than otherwise required under ERISA.

Employment and Training Administration
Annual State WIN Plans
1205–0214; ETA 8480, 8484, 8479, 8485

Form #	Affected public	Respondents	Frequency	Average time per response
ETA 8480	State/Local Govt	14	1	10
ETA 8484	do	14	1	10
ETA 8485	do	14	1	10
ETA 8479	do	14	1	10
Plan	do	14	1	37

1,078 total hours

The State WIN Plan is the basic planning and management tool utilized by the national and regional offices to ensure State compliance with legislation, regulations, and national office goals. It is the vehicle for providing allocation levels to State agencies. Respondents are State staff.

Producers/Purchasers Survey Data Request

1205–0191; ETA 8566

On Occasion

Businesses or other for-profit; Small businesses or organizations

30 respondents; 53 total hours; 1hr 45 minutes per response; 1 form

To acquire aggregate statistics needed by the Secretary of Labor to make determinations of eligibility of petitioning workers to apply for worker trade adjustment assistance in accordance with section 223 of the Trade Act of 1974 as amended.

Washington State Reemployment Bonus Demonstration Project

One-time

Individuals or households

3,000 respondents; 1,260 total hours; 25 minutes per response; no forms

The Washington Reemployment Bonus Experiment will assess if bonuses offered to Unemployment Insurance claimants reduce unemployment and program costs. The proposed survey will provide data essential to validate experimental results, and address issues, such as effects on displaced workers, critical to determining if the bonus program is appropriate public policy.

Employment Standards Administration

Maintenance of Receipts for Benefits Paid by a Coal Mine Operator 1215–0124; CM–200

Recordkeeping

Businesses or other for-profit

185 recordkeepers; 1 total hour

CFR 725.531 requires self-insured operators or insurance carriers who make benefit payments to black lung beneficiaries to maintain receipts for those payments for five years. Cancelled checks will suffice.

Mine Safety and Health Administration

Notification of Legal Identity

1219–0008; MSHA Form 2000–7

On occasion

Businesses and other for profit; small businesses or organizations

10,000 respondents; 1 hour per response; 10,000 total burden hours

Requires mine operators to file with MSHA the name and address of the mine and the name and address of the persons who control and operate the mine, and any revisions of such names and addresses. The information is used to identify persons chargeable with violations of safety and health standards, in the assessment of civil penalties, and in the service of legal documents.

Ventilation System and Methane and Dust Control Plan

1219–0084

On occasion; semiannually

Businesses or other for profit; small businesses or organizations

Standard	Number of respondents	Time per response	Total burden hours
30 CFR 75.300 & 75.300–4.	1,979	2 hours and 10 minutes.	1,556,507
30 CFR 75.303.	1,979	3 hours	2,142,070
30 CFR 75.305.	1,979	3 hours and 30 minutes.	304,776
30 CFR 75.307.	1,979	4 hours	348,304
30 CFR 75.309–4.	1,979	1 hour	1,213,840
Grand total.			5,565,487

	Number of respondents	Time per response	Total burden hours
Active mines	1,979	3 hours	11,874
New mines	200	8 hours	1,600
Total burden.			13,474

Requires operators of underground coal mines to submit a detailed ventilation system and methane and dust control plan and revisions thereof to MSHA for approval. The information is used to insure that a system is developed and used that will effectively ventilate the mine.

Escapeways and Escape Facilities

1219–0052

Weekly

Businesses or other for profit; small businesses or organizations

1,979 respondents; 1 hour per response; 148,029 total burden hours

Requires operators of underground coal mines to keep records of the results of mandatory weekly examinations of emergency escapeways. The records are used to determine that the integrity of the escapeways is being maintained.

Ventilation Tests and Examinations in Underground Coal Mines

1219–0088

Daily; weekly

Businesses or other for profit; small businesses or organizations

Requires operators of underground coal mines to keep records of the results of certain tests and examinations which are required to be performed to monitor the ventilation system.

First Aid Training for Supervisory Employees

1219–0085

On occasion

Businesses or other for profit; small businesses or organizations

5,585 respondents; 30 minutes per response; 2,793 burden hours

Requires coal mine operators to report to MSHA the names and job titles of selected supervisory employees and the date these employees completed the required first aid course. The information is used to determine compliance with the standard that selected supervisory employees have received the required first aid training and to identify those individuals who have been trained.

Extension Revision

Department Management (Labor Management Relations and Cooperative Programs)

Airline Employee Protection Program 29 CFR Part 220

1225–0024

On occasion; semi-annual

Individuals or households

35 response; 700 hours; 20 hours per response

Public Law 95–504 provides for (1) semi-annual report of designated employees hired and (2) an airline job vacancy list.

Both informational items are required by the statute.

Signed at Washington, DC this 18th day of September, 1989

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-22438 Filed 9-21-89; 8:45 am]

BILLING CODE 4510-23-M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wage payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

New General Wage Determinations Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume State and page number(s).

Volume I

Massachusetts:
MA89-4 ..... p.410a, p.410b.

Virginia:
VA89-60 ..... p.1188XXX-1, p.1188xxx-2.
VA89-66 ..... p.1188zzz-7, p.1188zzz-8.
VA89-67 ..... p.1188zzz-9, p.1188zzz-10.

Volume II

Arkansas:
AR89-8 ..... p.20a, p.20b.

Wyoming:
WY89-3 ..... *p.447, pp.448-450.*

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA89-1 (Jan. 6, 1989) ..... p. 371, pp. 372-377.
MA89-2 (Jan. 6, 1989) ..... p. 387, pp. 388-391.
MA89-4 (Sept. 22, 1989) ..... p. 410a, p. 410b.

New York:
NY89-4 (Jan. 6, 1989) ..... p. 709, p711.
NY89-5 (Jan. 6, 1989) ..... p. 717, p. 718.
NY89-7 (Jan. 6, 1989) ..... p. 737, p. 739.
NY89-8 (Jan. 6, 1989) ..... p. 755, p. 760.
NY89-9 (Jan. 6, 1989) ..... p. 767, p. 768.
NY89-10 (Jan. 6, 1989) ..... p. 769, pp. 770,773.
NY89-12 (Jan. 6, 1989) ..... p. 789, p. 793.
NY89-14 (Jan. 6, 1989) ..... p. 807, p. 808.
NY89-15 (Jan. 6, 1989) ..... p. 811, pp. 812-813.
NY89-17 (Jan. 6, 1989) ..... p. 817, pp. 819-820.
NY89-18 (Jan. 6, 1989) ..... p. 827, p. 827.

Pennsylvania:
PA89-24 (Jan. 6, 1989) ..... p. 1011, pp.1012-1013.

Tennessee:
TN89-1 (Jan. 6, 1989) ..... p. 1077, pp. 1078-1080.

Virginia:
VA89-18 (Jan. 6, 1989) ..... p. 1175, p. 1176.
VA89-26 (Jan. 6, 1989) ..... p. 1188e, p. 1188f.
VA89-46 (Jan. 6, 1989) ..... p. 1188uu, p. 1188uu-p. 1188vv.
VA89-60 (Sept. 22, 1989) ..... p. 1188xxx-1, p. 1188xxx-2.
VA89-66 (Sept. 22, 1989) ..... p. 1188zzz-7, p. 1188zzz-8.
VA89-67 (Sept. 22, 1989) ..... p. 1188zzz-9, p. 1188zzz-10

Volume II

Arkansas:
AR89-8 (Sept. 6, 1989) ..... p. 20a, p. 20b.

Iowa:
IA89-1 (Jan. 6, 1989) ..... p. 21, pp. 22-24.

Illinois:
IL89-19 (Jan. 6, 1989) ..... p. 239, p. 240.

Indiana:
IN89-1 (Jan. 6, 1989) ..... p. 241, pp. 242-245.

IN89-2 (Jan. 6, 1989) ..... p. 257, pp. 258-262.
IN89-4 (Jan. 6, 1989) ..... p. 289, p. 290.
IN89-5 (Jan. 6, 1989) ..... p. 303, pp. 304-306.
IN89-6 (Jan. 6, 1989) ..... p. 313, pp. 314, 318.
Minnesota:
MN89-8 (Jan. 6, 1989) ..... p. 587, pp. 587-593, p. 599.
MN89-12 (Jan. 6, 1989) ..... p. 609, p. 610.

Volume III

Alaska:
AK89-1 (Jan. 6, 1989) ..... p. 1, pp. 2,3.
Arizona:
AZ89-2 (Jan. 6, 1989) ..... p. 15, pp. 16, 19, 26-27.
Idaho:
ID89-1 (Jan. 6, 1989) ..... p. 145, pp. 146-148.
North Dakota:
ND89-2 (Jan. 6, 1989) ..... p. 229, pp. 230, 231.
South Dakota:
SD89-2 (Jan. 6, 1989) ..... p. 333, p. 334.
Utah:
UT89-3 (Jan. 6, 1989) ..... p. 353, pp. 355-356.
Washington:
WA89-1 (Jan. 6, 1989) ..... p. 363, p. 373.
Wyoming:
WY89-3 (Jan. 6, 1989) ..... p. 447-450.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC., this 15th day of September 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-22252 Filed 9-21-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[Training and Employment Guidance Letter No. 1-89]

Job Training Partnership Act: Presidential Awards Program for 1990

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces the Job Training Partnership Act (JTPA) Presidential Awards Program for 1990 and requests nominations from Governors with respect to Program Year 1988 (July 1, 1987-June 30, 1988).

DATE: Training and Employment Guidance Letter No. 1-89 was issued on August 28, 1989, and is continuing.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs, Room N-4703, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-535-0577.

Training and Employment Guidance Letter (TEGL) No. 1-89, announcing the procedures and criteria for the Presidential Awards program, is printed below.

Signed at Washington, DC this 15th day of September, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

BILLING CODE 4510-30-M

U.S. Department of Labor Employment and Training Administration Washington, D.C. 20210	CLASSIFICATION JTPA Presidential Awards
	CORRESPONDENCE SYMBOL TDC
	DATE August 28, 1989

TRAINING AND EMPLOYMENT GUIDANCE LETTER NO. 1-89

FROM : ROBERTS T. JONES
Assistant Secretary of Labor

SUBJECT : Job Training Partnership Act (JTPA)
Presidential Awards Program for 1990

1. Purpose. To announce the Job Training Partnership Act (JTPA) Presidential Awards Program for 1990 and to request nominations from Governors.

2. Reference. Public Law (Pub. L.) 97-300, Pub. L. 99-570.

3. Background. Section 172 of JTPA authorizes Presidential Awards for outstanding contributions to JTPA by the private sector and for model programs for those with multiple barriers to employment.

The JTPA Presidential Awards Program is designed to recognize individual and program accomplishments under JTPA and to strengthen support for innovative and effective employment and training initiatives. The Awards will afford increased visibility for JTPA. Through such visibility, we anticipate enhanced private sector and community participation in JTPA activities.

This is the third year for the Awards Program. It is based on an initial Program developed after consultation with the Governors and the public interest groups that serve as our JTPA partners.

4. Program Parameters. Attachment I provides the specifics on the scope, categories and criteria for the 1990 Awards. It also details selection procedures and plans for Awards ceremonies.

RESCISSIONS	EXPIRATION DATE Continuing

DISTRIBUTION

BILLING CODE 4510-30-C

5. *Nomination Procedures.* All nominations are to be made only by the Governors of the States.

• Governors may submit only *one* nomination each year in each of the three Annual Award categories.

• Governors also may submit only *one* nomination each yaer for a program deserving of a Special Award.

• In deciding on their nominations, Governors are encouraged to solicit recommendations from National Alliance of Business representatives as well as from other JTPA partners in the State, such as: service delivery areas; private industry councils; chief elected officials; State Job Training Coordinating Councils; local education organizations; Human Resources Development Institute; and State organizations representing the private sector, such as the Chamber of Commerce.

• Nominations are to be made on the JTPA Presidential Awards Entry Form for 1990 (Attachment II), four copies of which are attached to this Training and Employment Guidance Letter (TEGL). A separate form with three copies, is to be submitted for each nomination being made. Particular attention should be paid to Part D of the Form—Criteria Information. It is essential that *each* criterion for the category under which a nomination is made be listed and specifically addressed. The criteria for the categories are found in Section C of Atachment I of this TEGL.

Only the written narratives addressing the criteria will be considered in the review of the nominations. *No* attachments (i.e., videos, brochures, etc.) will be considered.

• *Nominations must be postmarked by midnight on October 27, 1989,* and should be sent to: Robert N. Colombo, Director, Office of Employment and Training Programs, Employment and Training Adminstration, U.S. Department of Labor, Room N-4703, 200 Constitution Avenue, NW., Washington, DC 20210.

6. *Awards Timetable.*

• Nominations Postmarked by—October 27, 1989

• Award Selections by—January, 1990

• National Awards Ceremony—late March, 1990

7. *State Notification.* A copy of this TEGL is also being sent to your State JTPA Liaison.

8. *Federal Register Publication.* A copy of this TEGL is being published in the *Federal Register.*

9. *Inquiries.* Questions concerning this TEGL should be addresssed to Mr. Robert N. Colombo on (202) 535-0577.

Attachments

Attachment I—JTPA Presidential Awards for 1990

A. Scope

Awards will be for activities carried out under Titles I, II and III (Formula-Funded Programs only) of the Job Training Partnership Act (JTPA) during Program Year (PY) 1988 (July 1, 1988–June 30, 1989).

B. Categories

• *Annual Awards*

One award and two honorable mentions will be made each year in each of the following categories:

—Outstanding Contributions to a JTPA Program by a Private Sector Volunteer.

—Outstanding Contributions to a JTPA Program by a Private Industry Council.

—Outstanding Program for Serving Those With Multiple Barriers to Employment.

• *Special Awards*

Each year, at the Secretary's discretion, additional Awards may be given to outstanding programs not falling within the Annual Awards categories above. Programs considered for a Special Award will be those Title II and Title III programs which address and emphasize high quality, innovative occupational and education training.

This year the Department will give preference in the Special Awards category to three types of programs:

—Successful Title II programs that offer services to most in need and at-risk youth, especially those youth who are economically disadvantaged and basic skills deficient, school dropouts, teen parents, or homeless;

—Programs that have achieved exemplary coordination and leveraging of resources from educational agencies, local welfare agencies, community organizations, business and labor organizations, and other social service programs; and

—Outstanding programs serving dislocated workers.

C. Criteria

Individuals and programs nominated must have been active under JTPA during Program Year 1988. Programs must have been in operation for at least one year, with measurable results. A nomination must meet all of the criteria for the category.

• *Annual Awards*

Following are the criteria to be met in each of the three Annual Award categories:

• Outstanding contribution to a JTPA program by a private sector volunteer. The volunteer must:

—Be a member of the private-for-profit sector. May be on the private industry council (PIC), the State Job Training Coordinating Council, or be outside the official JTPA system as long as he/she contributes to JTPA through his/her efforts.

—Have demonstrated a continuing commitment to JTPA through donation of time and services.

—Have exercised leadership in an area of the job training program system which, through such leadership, has improved substantially.

—Have been instrumental in increasing the awareness of the benefits of JTPA in the business community.

• Outstanding contribution to a JTPA program by a Private Industry Council. This Award will recognize the achievements and exemplary activities of the PIC volunteers, who are representatives from the public and private sector. The PIC must have:

—Exercised oversight over and guidance for the service delivery area's (SDA's) programs, to the extent that the programs represent the training needs of the local area.

—Represented an SDA which serves the most at-risk population and has *exceeded* all eight Department of Labor performance standards as adjusted by the Governor for local conditions.

—Promoted increased private sector participation in JTPA activities, such as provision of training and placement of participants in good quality jobs.

—Demonstrated coordination and linkages among its members and within their organizations to further the SDA's activities.

—Demonstrated the ability to leverage non-JTPA funds through collaboration and planning with other human service agencies and the private sector.

• Outstanding program for assisting individuals with multiple barriers to employment. Program may be operated by an SDA, a contractor or by any other entity administering a JTPA program meeting the criteria below. Program must be *specifically targeted* to those who have encountered multiple barriers to employment. Participants must be JTPA eligible and may be welfare recipients, school dropouts, teenage parents, people with disabilities, older workers, displaced homemakers, veterans, offenders, alcoholics, addicts, homeless, have limited English language proficiency or other significant barriers. The outstanding program will be one that provides assistance to participants to be able to overcome their various

difficulties and obtain gainful employment as a result of the training. Program must have:

—Exceeded all goals and performance standards established for the program.
—Provided training responsive to the target group by leveraging non-JTPA resources within the community.
—Been coordinated effectively with the private sector, other training and employment agencies, labor, welfare agencies, the education system, and other appropriate organizations.
—Achieved acceptance by the business community of those with multiple barriers to employment, as evidenced by private sector participation in the training programs and job placement.
—Been well planned and administered, as demonstrated by successful financial management and performance results and evaluations.

• Special Awards.

Programs nominated for a Special Award may be operated by an SDA, a contractor or by any other entity administering a JTPA program meeting the criteria below. Nominations will be considered for a Special Award which address and emphasize high quality occupational and education training. Preference will be given to programs that offer services to most in need and at-risk youth; programs that have achieved exceptional coordination and leveraging of resources; and programs for dislocated workers. Program must have:

—Exceeded all goals and performance standards established for the program.
—Provided innovative training by leveraging non-JTPA resources in the community.
—Coordinated effectively with the private sector, other training and employment agencies, labor and other organizations.
—Been geared to the needs of the target population and the local economy.
—Been well planned and administered, as demonstrated by successful financial management and program performance results and evaluations.
—Been conducive to replication by other SDAs.

D. Selection

The selection process will be a four-tiered approach:

• *Staff Review.*

Initial review and recommendations will be made by Department of Labor staff. The staff review will reduce the number of nominations from the Governors to no more than 20 for each Annual Awards category and no more than 20 for Special Awards.

• *Panel Review.*

A panel of training and employment experts from the public and private sectors will review each nomination.

The Panel will ensure that the top nominations in each category are thoroughly validated through a field review. The Panel will recommend to an Executive Committee five nominations for each of the Annual Awards categories and nominations for Special Awards.

• *Executive Committee Review.*

A committee, chaired by the Assistant Secretary for Employment and Training and comprised of a White House representative, a Secretary of Labor representative, and the Assistant Secretary, will review the Panel's recommendations and results of the field reviews. The Committee will ensure that the most qualified nominations are recommended to the Secretary of Labor, who will make the final selection of Award recipients. The committee will recommend to the Secretary three nominations for each of the Annual Awards categories and a limited number of the most qualified nominations for Special Awards.

• *Secretary Review.*

The Secretary of Labor will review the Executive Committee's and Panel's recommendations and will make the final selection of winners and honorable mentions in all three of the Annual Awards categories. The Secretary will also select the recipients of Special Awards.

E. Award Ceremonies

Awards will be presented to the winners at a National Awards ceremony. Where possible and appropriate, Awards for honorable mentions will be presented at local ceremonies in the hometown of each winner. The National Awards ceremonies will be arranged by the Department of Labor in coordination with the White House, the Governors and its various JTPA partners. The National Awards ceremony will vary from year to year depending on the availability of people and space. When possible, a special White House or Department of Labor presentation will be held. The Department from time to time also may ask the various partners in the JTPA system to include the Awards ceremony as part of an annual conference. Local ceremonies in the hometowns of the recipients will be held where possible and appropriate, with the Awards being presented by a high-level Department of Labor official. Governors will be invited to participate in all ceremonies.

[FR Doc. 89-22440 Filed 9-21-89; 8:45 am]
BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-140-C]

Block Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Block Coal Corporation, P.O. Box 1196, Barbourville, Kentucky 40906 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-13970) located in Whitley County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follow:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use hand-held continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a hand-held continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specifications.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 23, 1989. Copies of the petition are available for inspection at that address.

Dated: September 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances

[FR Doc. 89-22436 Filed 9-21-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-133-C]

P.B.&G. Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

P.B.&G. Mining, Inc., Box 415, Turkey Greek, Kentucky 41570 has filed a petition to modify the application of 30 CFR 75.1710 (cabs and canopies) to its No. 1 Mine (I.D. No. 15-16433) located in Pike County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cabs or canopies be installed on the mine's electric face equipment.

2. The mine is in the lower Cedar Grove Coal bed and ranges in height from 40 to 47 inches.

3. The seam pitches causing ascending and descending grades throughout the mine.

4. The use of cabs or canopies on the mine's electric face equipment would result in a diminution of safety for the miners affected because the cabs or canopies would:

(a) Dislodge and loosen roof support;

(b) Restrict the equipment operator's visibility, positions, and pinch points; and

(c) Create the possibility of an accident because the operators lean out of compartments in order to see.

5. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 23, 1989. Copies of the petition are available for inspection at that address.

Dated: September 13, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-22437 Filed 9-21-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

Alaska State Standards; Notice of Approval

1. *Background.* Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On September 28, 1984, notice was published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending subpart R of part 1952.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under Section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to a Federal standards change, the State has submitted by letter dated May 4, 1989 from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard revision comparable to 29 CFR part 1926 subpart "K" and associated amendments as revised and published in the **Federal Register** (51 FR 25318) on July 11, 1986. The State's original standard was published in the **Federal Register** (41 FR 53077) on December 3, 1976. The State standard revision and associated amendments which are contained in AAC 05.110, Electrical; AAC 05.060(b)(1), Fire Prevention; AAC 05.060(c)(2)(2)(D)(v), Flammable and Combustible Liquids; AAC 05.100(b)(4)(A)(iv), Arc Welding and Cutting; AAC 05.190(d)(10)(c), Compressed Air, correspond to the Federal standard 29 CFR 1926 Subpart K (revised) and associated amendments to 29 CFR 1926.151(a)(1), .152(b)(4)(v), .351(d)(5), and .803(j)(3).

The State's March 6, 1987 submission was returned to the State after Regional review concurred with the State's assessment that its standard needed corrections. The State's first re-submission was forwarded on March 24, 1988 and was subsequently returned to the State on June 24, 1988 after Regional review revealed discrepancies. The State's second re-submission was received on May 4, 1989. The State's revised Electrical Code and associated amendments were adopted on November 14, 1986 with an effective date of January 10, 1987 after public notification of the comment period was published in the statewide media on September 30, October 3 and 8, 1986. Public hearings were held on November 4, 5, and 6, 1986. Subsequently, the State's first corrective amendment was adopted February 8, 1988 and effective on March 26, 1988 after public notification of the comment period was published in the statewide media on November 25, 1987 and December 2, 1987. No requests for a hearing were received. The State's second corrective amendment was adopted on March 23, 1989 with an effective date of May 21, 1989 after public notification was published in the statewide media on February 21 and 28, 1989. No requests for a public hearing were received. Each of the public comment periods was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State has substituted the words "may not" and "must" in its code for the Federal terms "shall not" and "shall"; editorial changes have been made to accommodate the State's codification and numbering system.

By letter dated March 29, 1988, from Jim Sampson, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State on its own initiative submitted a corrective amendment to AAC 01.0707(k), General Safety Code, Article 1. The Code was originally approved in the **Federal Register** (42 FR 2366) on January 11, 1977. The State's original response to 29 CFR 1910.183(n), Figure N–1, which appeared in the **Federal Register** (40 FR 13440) on March 26, 1975 was inadvertently deleted during the Revocations project (43 FR 49744) dated October 24, 1978.

The State's standard amendment, which is contained in Subchapter 01.0707(k), Alaska Occupational Safety and Health Code, Helicopters, was adopted by the State on February 8, 1988 with an effective date of March 26, 1988 under authority vested in Jim Sampson, Commissioner, by AS 18.60.020, and after notice and opportunity for public comments under AS 44.62.190, 44.62.200, and 44.62.210.

2. *Decision.* Having reviewed the State submissions in comparison with the Federal standards, it has been determined that the State standard amendment for helicopters is identical to the Federal standard and that the State standard amendment for Electrical Standards for Construction is at least as effective as the comparable Federal standard amendment, as required by section 18(c) of the Act. OSHA has also determined that the differences between the State and Federal standard amendments for Electrical Standards for Construction are minimal and that the State standards amendment is thus substantially identical. OSHA therefore approves these amendments; however, the right to reconsider this approval for the Electrical Standards for Construction amendment is reserved should substantial objections be submitted to the Assistant Secretary.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Washington 98174; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, Room N–3476, 200 Constitution Avenue NW., Washington, DC 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards amendments are identical or substantially identical to the Federal standard which was promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards amendments were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective September 22, 1989. (Sec. 18, Pub. L. 91–596, 84 STAT. 6108 (29 U.S.C. 667)).

Signed at Seattle, Washington this 27th day of March, 1989.

James W. Lake,

Regional Administrator.

[FR Doc. 89–22439 Filed 9–21–89; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before November 6, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the diposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Logistic Agency (N1–361–89–3). Decrease in retention period for criminal incident/investigations files.

2. Defense Logistics Agency (N1–361–89–5). Administrative and facilitative automated information systems.

3. Department of the Navy, Naval Data Automation Command (N1–NU–89–2). Closed allotment and family allowance account files.

4. Department of Agriculture, Forest Service, Fiscal and Public Safety (N1–95–88–3). Computer printouts and related microfilm of year-end reports of statements of obligation, national appropriation control, and budget execution.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–89–5). Upper air observations files maintained by the National Climatic Data Center.

6. Federal Deposit Insurance Corporation, Division of Accounting and Corporate Service (N1–34–89–3). Reduction in retention period for miscellaneous bank reports and surveys, and summaries of deposits.

7. General Services Administration, Office of Administration (N1–269–89–2). Directives clearance tracking files, routine correspondence and records relating to the production of Privacy Act reports, routine reports and records relating to the implementation of the Freedom of Information Act.

8. Department of Health and Human Services, Health Care Finance Administration (N1–440–89–5). Records of the Health Care Finance Administration's Internal Review Control Task Force.

9. National Commission on Food Marketing (N1–220–89–2). Administrative correspondence, drafts, background and reference material, working papers, questionnaires, and ADP punch cards.

10. Railroad and Retirement Board (N1–184–89–3). Comprehensive schedule, part 4 of 4. Temporary records relating to claims and benefits.

11. Department of State, Refugee Programs, Refugee Data Center (N1–59–89–40). Routine and facilitative records.

Dated: September 18, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89–22447 Filed 9–21–89; 8:45 am]

BILLING CODE 7515–01–M

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 USC 3303a(a).

DATE: Requests for copies must be received in writing on or before November 6, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending:

1. Department of the Army (N1–AU–89–11). Clothing Issue/Sales Store Establishment Files. Routine administrative files relating to review of change of capacity, establishment of, or discontinuance of such facilities.

2. Department of the Army (N1–AU–89–12). Vending Facility Program for the Blind on Federal Property. Administrative records created by implementation of the Randolph-Sheppard Act, including applications, permits, operations, complaints and other routine correspondence.

3. Department of the Army (N1–AU–89–13). Contract Audit Files. Audit reports and working papers accumulated by resident contract audit office, relating to audits of civil funded contracts and agreements.

4. Defense Intelligence Agency, Directorate for Technical Services and Support (N1–373–89–9). Routine and facilitative automated personnel data files.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–89–1). Autographic Observation files maintained by the National Climatic Data Center.

6. General Services Administration, Office of Administrative Services (N1–269–89–1). Chapter 11, Information Management Program Records.

7. Department of State, Bureau of Public Affairs (N1–59–88–2). Reference, administrative, and facilitative materials.

8. Tennessee Valley Authority, Resource Development Group, River Operations (N1-142-88-4). Climatological records.

9. Department of the Treasury, Internal Revenue Service, Disclosure Function (N1-58-89-3). Tax check files.

Dated: September 18, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-22448 Filed 9-21-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL CRITICAL MATERIALS COUNCIL

National Commission on Superconductivity (NCOS)

The purpose of the National Commission on Superconductivity is to review all major policy issues regarding United States applications of recent research in advanced superconductors in order to assist the Congress in devising a national strategy, including research and development priorities, the development of which will assure United States leadership in the development and application of superconducting technologies. The Commission will meet on October 19, 1989, in the second floor theater of the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC, from 8:30 a.m. until 5:00 p.m.

The proposed agenda is the following:

1. Briefing the Commission on its responsibilities and organization.

2. Presenting of recent studies which convey the status of superconductivity research and competition.

3. Discussion of working groups to accomplish the writing of the mandated report.

4. An open period for public comment and discussion.

The entire meeting will be open to the public.

If members of the public give prior notice, they will be included on a list for the day of the meeting and will not have to register at the guard's desk on the morning of the meeting. Members of the public who are not registered may still gain entrance on the morning of the meeting. To register call Mary Chuckerel at (202) 395-7200.

Perry M. Lindstrom,

Acting Executive Director.

[FR Doc. 89-22388 Filed 9-19-89; 9:46 am]

BILLING CODE 3130-01-M

NATIONAL COMMUNICATIONS SYSTEM

Federal Telecommunication Standards; Analog to Digital Conversion of Radio Voice by 4,800 Bit/Second Code Excited Linear Prediction

AGENCY: National Communications System, Office of Technology and Standards.

ACTION: Notice for comment on proposed standard.

SUMMARY: The purpose of this notice is to solicit the views of Federal agencies, industry, the public, and State and local governments on proposed Federal Telecommunications Standard 1016, "Analog to Digital Conversion of Radio Voice by 4,800 Bit/second Code Excited Linear Prediction (CELP)."

DATE: Comments are due on or before December 21, 1989.

ADDRESS: Send comments to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Fenichel, National Communications System, telephone (202) 692-2124.

SUPPLEMENTARY INFORMATION: 1. The General Services Administration (GSA) is responsible under the provisions of the Federal Property and Administrative Services Act of 1949, as amended, for the Federal Standardization Program. On August 14, 1972, the Administrator of General Services designated the National Communications System (NCS) as the responsible agent for the development of Federal telecommunication standards.

2. Prior to the adoption of proposed Federal standards, it is important that proper consideration be given to the needs and views of Federal agencies, industry, the public, and State and local governments.

3. Requests for copies of the September 14, 1989 draft of FED-STD 1016 should be directed to the National Communications System, Office of Technology and Standards, Washington, DC 20305-2010.

Dennis Bodson,

Assistant Manager, NCS Office of Technology & Standards.

[FR Doc. 89-22430 Filed 9-21-89; 8:45 am]

BILLING CODE 3810-DG-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-320]

GPU Nuclear Corp.; Availability of Final Supplement 3 to the Programmatic Environmental Impact Statement Related to Decontamination and Disposal of Wastes From March 28, 1979 Accident Three Mile Island Nuclear Station, Unit 2

The U.S. Nuclear Regulatory Commission has published its Final Report, Supplement 3, to the Programmatic Environmental Impact Statement (PEIS) related to decontamination and disposal of radioactive wastes resulting from the March 28, 1979 accident, Three Mile Island Nuclear Station, Unit 2 (NUREG 0683). Supplement 3 to the PEIS addresses environmental impacts associated with GPU Nuclear Corporation's (GPUN) proposal for long term storage of the facility as well as a number of alternatives.

Copies of the supplement have been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, N.W., Washington, DC 20555, and in the Local Public Document Room, Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105, for review by interested persons. Copies of the supplement may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 2013-7082. GPO deposit account holders may charge orders by calling 202-275-2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 14th day of September 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects—I/II, Office of Nuclear Reactors Regulation

[FR Doc. 89-22445 Filed 9-21-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Agenda

In accordance with the purposes of sections 29 and 182b, of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on October 5-7, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice

of this meeting was published in the **Federal Register** on August 22, 1989.

Thursday, October 5, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.–8:45 a.m.: Comments by ACRS Chairman (Open)—The ACRS Chairman will report on items of current interest.

8:45 a.m.–10:45 a.m.: Definition of Adequate Protection (Open)—The Committee will discuss and comment on a proposed position paper regarding the definition of "adequate protection."

11:00 a.m.–12:00 Noon: Standardized Pressurized Water Reactors (Open)—The Committee will be briefed regarding the status of the review of the standard PWR designs proposed by the Westinghouse Corporation (RESAR SP/90, *W* AP–600) and the Combustion Engineering Company (CESSAR-System 80+).

1:00 p.m.–2:30 p.m.: Meeting with Director, NRC Office of Nuclear Regulatory Research (Open)—The Committee will discuss items of mutual interest.

2:30 p.m.–3:30 p.m.: Generic Issue B-56, Diesel Reliability (Open)—The Committee will review and report on the proposed NRC staff resolution of this generic issue.

3:45 p.m.–5:45 p.m.: Accident Management (Open)—The Committee will review and report on the proposed NRC generic letter regarding consideration of accident management activities in the Individual Plant Examinations (IPEs).

5:45 p.m.–6:30 p.m.: Maintenance of Nuclear Plants (Open)—The Committee will discuss a proposed ACRS report regarding this matter.

Friday, October 6, 1989.

8:30 a.m.–10:00 a.m.—Access Authorization at Nuclear Power Plants (Open/Closed)—The Committee will review and report on the proposed NRC rule regarding access authorization at nuclear power plants.

Portions of this session will be closed as necessary to discuss safeguards and security information for nuclear plants.

10:15 a.m.–11:15 a.m.—Generic Issue 87—Failure of HPCI Steam Line Without Isolation (Open)—The Committee will review and discuss the proposed NRC staff resolution of this generic matter and matters relating to the performance of other types of valves in nuclear power plants.

11:15 a.m.–12:00 Noon—Future ACRS Activities (Open)—The Committee will discuss anticipated ACRS subcommittee activities and items proposed for consideration by the full Committee.

1:00 p.m.–2:30 p.m.: Generic Issue 135, Steam Generator and Steam Line Overfill Issues (Open)—The Committee will review and report on the proposed NRC staff resolution of this generic issue.

2:45 p.m.–5:15 p.m.: Standard Plant Design CANDU–3 (Open)—Briefing and discussion regarding proposed design of this standardized nuclear plant.

5:15 p.m.–6:30 p.m.: Maintenance of Nuclear Power Plants (Open)—Continue discussion of proposed ACRS report regarding this matter.

Saturday, October 7, 1989.

8:30 a.m.–12:00 Noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

1:00 p.m.–2:00 p.m.: Appointment of ACRS Members (Open/Closed)—The Committee will discuss qualifications of candidates proposed for consideration as ACRS members.

Portions of this session will be closed as necessary to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

2:00 p.m.–2:30 p.m.: ACRS Subcommittee Activity (Open)—The Committee will hear and discuss reports of ACRS subcommittee activities, including development of containment design criteria for future reactors and proposed changes in the ACRS Bylaws.

2:30 p.m.–3:00 p.m.: (Open)—The Committee will complete discussion of items considered during this meeting.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 27, 1988 (53 FR 43487). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley, prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with Subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting as noted above to discuss safeguards and security information at nuclear plants (5 U.S.C. 552b(c)(3)) and information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492–8049), between 8:15 a.m. and 5:00 p.m.

Dated: September 18, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89–22340 Filed 9–21–89; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Joint Subcommittees on Containment Systems and Structural Engineering; Meeting

The ACRS Subcommittees on Containment Systems and Structural Engineering will hold a joint meeting on October 17, 1989, at the Hyatt Regency at O'Hare International Airport, 9300 West Bryn Mawr Avenue, Rosemont, IL.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, October 17, 1989—8:30 a.m. until the conclusion of business.

The Subcommittees will continue to discuss containment design criteria for future plants with invited speakers from industry and national laboratories.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with

any of the consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with invited speakers as noted above.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Dean Houston (telephone 301/492-9521) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Dated: September 18, 1989.

Sam Duraiswamy,

Acting Chief, Project Review Branch No. 2.

[FR Doc. 89-22463 Filed 9-21-89; 8:45 am]

BILLING CODE 7590-01-M

Galileo Spacecraft Launch; Nuclear Energy Accountability Project

Notice is hereby given that, by Petition filed on September 3, 1989, Thomas J. Saporito, Jr., on behalf of the Nuclear Energy Accountability Project, requested that the NRC intervene and stop the launch of the Galileo Spacecraft scheduled for October 12, 1989. The Petition alleged that the launch of the Galileo Spacecraft, which contains considerable quantities of plutonium-238, would be in violation of Public Law 94-75 which provides that the NRC shall not license any shipments by air transport of plutonium in any form with the exception of certain medical devices. The Petition alleges a number of health and safety concerns should the launch fail and should the material be dispersed into the atmosphere.

The Petition is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. As provided by § 2.206, appropriate action will be taken on the Petition within a reasaonable time.

Copies of the Petition are available for public inspection at the Commission's Public Document Room at 2120 L. Street, NW. Washington, DC 20555.

Dated at Rockville, Maryland this 15th day of September, 1989.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-22444 Filed 9-21-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-423]

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF-49 and issued to Northeast Nuclear Energy Company, et al (the licensee), for the Millstone Nuclear Power Station, Unit 3, located at the licensee's site in New London County, Connecticut.

The proposed amendment would provide revised Technical Specifications to decrease the reactor trip set point and allowable value for the reactor coolant pump (RCP) low shaft speed (underspeed trip set point) from 97.8 to 95.8 percent of rated speed and from 94.6 to 92.5 percent rated speed, respectively.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By October 23, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to John F. Stolz: petitioner's name and

telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499 (attorney for the licensee).

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 1, 1989, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut, 06385.

Dated at Rockville, Maryland, this 15th day of September, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 89–22446 Filed 9–21–89; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271–OLA–4; ASLBP No. 89–595–03–OLA]

Vermont Yankee Nuclear Power Corp.; Notice of Prehearing Conference

September 18, 1989.

Before Administrative Judges: Robert M. Lazo, Chairman, Jerry Harbour, Frederick J. Shon. In the matter of: Vermont Yankee Nuclear Power Corporation, Vermont Yankee Nuclear Power Station.

Notice is hereby given that a prehearing conference in the above-identified proceeding, concerning the proposed extension of the expiration date of the Facility Operating License for Vermont Yankee Nuclear Power Station, will commence at 9:30 a.m. on Tuesday, November 14, 1989, at the U.S. District Court, Post Office and Courthouse Building, 204 Main Street, Brattleboro, Vermont. The prehearing conference will continue, to the extent necessary, on Wednesday, November 15, 1989. Among matters to be considered at the conference will be the delineation of the key issues an sub-issues in the proceeding, discovery, possibility of stipulating various facts or settlement of various issues, further scheduling for the proceeding, and such other matters as may aid in the orderly disposition of the proceeding.

Members of the public are invited to attend the conference. However, limited appearance statements, as authorized by 10 CFR 2.715(a), will not be taken at this session of the proceeding. Documents related to this proceeding are on file at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Commission's Local Public Document Room, Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Further, pursuant to 10 CFR 2.714(b), on or before October 16, 1989, any petitioner who filed a petition for leave to intervene shall file a supplement to the petition for leave to intervene which must include a list of the contentions which petitioner asks to have litigated in the matter and the bases for each contention set forth with reasonable specificity. An answer addressing the admissibility of any contention set forth in a supplement to a petition to intervene shall be filed by the Licensee on or before October 27, 1989 and by the NRC Staff on or before November 3, 1989.

It is so ordered.

Issued at Bethesda, Maryland, this 18th day of September 1989.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 89–22464–Filed 9–21–89; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments on U.S. Negotiations With the Government of Venezuela in the Context of the Accession of Venezuela to the General Agreement on Tariffs and Trade (GATT)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Notice is hereby given that the Trade Policy Staff Committee (TPSC) is requesting written public comments on Venezuela's announced intention to accede to the GATT and on the bilateral negotiations that will accompany Venezuelan accession. Comments received will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Venezuelan accession and for the bilateral negotiations concerning the terms of its accession to the General Agreement.

DATES: Public comments are due by 12:00 noon, October 20, 1989.

ADDRESS: Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Cecilia Leahy Klein, Director for GATT Affairs (telephone: 202–395–3063), or Betsy Stillman, Director, Andean and African Affairs, (telephone: 202–395–5190), Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506.

SUPPLEMENTARY INFORMATION:

1. Written Comments

The Chairman of the Trade Policy Staff Committee invites written public comments on the issues that will be addressed in the course of examination by the Contracting Parties to the GATT of the request by Venezuela for accession and during bilateral negotiations in the context of Venezuelan accession to the GATT addressing the terms of its accession, including tariff concessions. The Committee is particularly interested in views on the impact on U.S. trade of Venezuelan accession to the GATT, on specific bilateral issues covered by the provisions of the General Agreement that should be addressed in the accession negotiations, on tariff items of specific interest to U.S. exporters to Venezuela and on the experience of U.S. firms in trading with Venezuela.

All comments will be considered by the Executive Branch in developing the U.S. position and objectives for GATT examination of Venezuelan accession and for bilateral negotiations concerning both the substantive terms of Venezuelan accession and the establishment of a GATT schedule of tariff concessions.

Persons wishing to submit written comments should provide a statement, in twenty copies, by noon, Friday, October 20, 1989, to Carolyn Frank,

TPSC Secretary, Office of the U.S. Trade Representative, Room 523, 600 17th Street, NW., Washington, DC 20506. Non-confidential information received will be available for public inspection by appointment, in the USTR Reading Room, 600 17th Street, NW., Room 101, Washington, DC, Monday through Friday, 10:00 a.m. to 12:00 noon and 1:00 p.m. to 4:00 p.m. For an appointment call Brenda Webb on 202–395–6186. Business confidential information will be subject to the requirements of 19 CFR 2003.6. Any business confidential material must be clearly marked as such, and must be accompanied by a non-confidential summary thereof.

2. Background

On June 22, 1989, the GATT Contracting Parties received Venezuela's request to accede to the General Agreement pursuant to Article XXXIII. A Working Party, composed of interested GATT members, was established to examine this request. The Working Party will consider the application of Venezuela for full accession, examine its foreign trade regime, and submit to the GATT Council recommendations that may include a draft Protocol of Accession. The United States will be a major participant in these deliberations, and will engage in bilateral negotiations with Venezuela to develop the terms of its accession to the General Agreement contained in the Protocol.

The Protocol of Accession that Venezuela negotiates with the Contracting Parties will set forth the agreed terms of Venezuela's GATT membership, including the relationship of its foreign trade regime to the Articles of the General Agreement. Aspects of a country's foreign trade regime that are normally examined in such negotiations include: national treatment of imports, licensing requirements, quantitative trade restrictions, subsidy practices, non-tariff charges and taxes, customs valuation and classification procedures, transparency in trade regulation and administration, and state trading practices and monopolies.

In addition, as part of the accession process, Venezuela will also conduct bilateral negotiations with interested GATT members to formulate a schedule of tariff concessions that will become part of its Protocol of Accession. These concessions will consist of Venezuela's agreement to bind the tariffs applied to certain imports, restricting its ability to increase the tariff rate applied to those items without offering appropriate compensatory tariff concessions on other items. The rates of duty negotiated bilaterally will be applied to the trade of all GATT contracting parties after Venezuela's accession to the GATT.

The advantages to Venezuela of GATT membership are several. As a GATT member, Venezuela will enjoy a multilateral guarantee of unconditional most favored nation treatment from all other GATT contracting parties that is more comprehensive than that available through bilateral agreements. The bindings on tariffs maintained in the tariff schedules of other GATT contracting parties will be extended to Venezuelan imports as obligations under the GATT. Venezuela will also have recourse to GATT procedures to protect itself from unfair or unreasonable trade actions by its trading partners. Through the dispute settlement provisions in the General Agreement, member countries are able to utilize a multilateral forum, largely independent of the political pressures influencing bilateral relationships, to resolve disputes. As a GATT contracting party, Venezuela will also have the opportunity to participate in all aspects of the Uruguay Round of Multilateral Trade Negotiations.

In return for these benefits, Venezuela will be expected to grant similar benefits to the trade of other GATT contracting parties, to conduct its trade policies in accordance with the rules set out in the General Agreement, and to establish its own schedule of tariff concessions.

Authority: 15 CFR 2002.2.

David Weiss,

Chairman, Trade Policy Staff Committee.

[FR Doc. 89–22462 Filed 9–21–89; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rule 15c2–11; File No. 270–196]

Forms Under Review by the Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash, Deputy Executive Director, (202) 272–2142.

Upon Written Request Copy Available From: Securities and Exchange Commission, Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–1002.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval proposed revisions to Rule 15c2–11 (17 CFR 240.15c2–11) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). Rule 15c2–11 regulates the initiation or resumption of quotations in a quotation medium by a broker or dealer for over-the-counter securities. It is estimated that approximately 100 brokers and dealers would incur an estimated aggregate burden of 25 hours, or 15 minutes per broker-dealer, to comply with the rule's proposed revisions.

The estimated burden hours are made solely for purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, 450 Fifth Street, NW., Washington, DC 20549–6004, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Act Project 3235–0196), Room 3208 New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

September 8, 1989.

[FR DOC. 89–22377 Filed 9–21–89; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–27243; File No. SR- Amex-89–15]

Self-Regulatory Organizations; American Stock Exchange, Inc.; Order Approving Proposed Rule Change To Amend the "Admission of Members" Section of the Exchange's Rules

On June 26, 1989, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the "Admission to Members" section of the Exchange's rules to update them and to require posting of prospective member organizations, associate members, allied members, member organizations and approved persons.[3]

The proposed rule change was noticed in Securities Exchange Act Release No. 26996 (June 30, 1989), 54 FR 29423 (July 12, 1989). No comments were received on the proposed rule change.

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] Paragraphs 9175–9180 of the Amex Guide currently set forth the Exchange's membership requirements and admissions procedures.

In its filing, the Exchange stated that the rule change will update the Exchange's rules pertaining to membership requirements and admissions procedures. In addition, the Exchange stated that its proposal will consolidate in one location all relevant information related to the admissions process.

Paragraphs 9176, 9177 and 9178 of the Amex Guide set forth the Exchange's membership requirements and admissions procedures for regular membership, associate membership and allied membership, respectively. The Exchange proposes to expand these provisions of the "Admission of Members" section to include admission of options principal members, limited trading permit holders, and regular member organizations.

The Exchange proposes to amend Paragraph 9176 to clarify that options principal member applicants and limited trading permit holders must satisfy the same requirements that apply to regular member applicants. Paragraph 9176 also has been amended to provide notice to regular and options principal member applicants of existing Exchange membership standards regarding financial responsibility and broker-dealer application. In addition, the proposed amendments to Paragraph 9176 require that an applicant for membership must be sponsored by two Floor members of the Exchange who have been acquainted with the applicant for a sufficient length of time; that the applicant must attend an Exchange orientation seminar before being permitted to execute orders on the floor without the supervision of an experienced Floor member; and that each applicant must sign the Exchange Constitution before being admitted to membership privileges. The Exchange's proposed amendments to Paragraph 9176 also provide that prior to approval for regular or options principal membership or as a limited trading permit holder, an applicant must pay an initiation and processing fee to the Exchange.[4] Similarly this Paragraph provides that prior to admission to the privileges of regular membership, an applicant must make an initial contribution to the Exchange's gratuity fund.[5]

The Exchange proposes to amend Paragraph 9177 to provide that each applicant for associate membership must agree that if elected he will comply with the Exchange Constitution and Rules, and that prior to his approval for associate membership an applicant must pay an initiation and processing fee to the Exchange.[6] Paragraph 9177 also has been amended to conform to the requirement in Paragraph 9176 that an applicant must be of good character and reputation and must pass an appropriate exam. In addition, the Exchange proposes that Paragraphs 9177 and 9178 regarding associate and allied members, respectively, be amended to reflect new posting procedures. Under Paragraph 9176, the Exchange posts on the trading floor bulletin board for seven days the name of all prospective regular or options principal members and limited trading permit holders. The revision to Paragraph 9177 will conform the posting period for associate membership to this procedure, and the revision to Paragraph 9178 will establish a posting requirement for allied membership.

Finally, the Exchange proposes new Paragraph 9179 which contains information regarding admission of member organizations and sets forth a minimum posting period of seven days for member organizations and approved persons and also requires certain submissions to the Exchange by prospective member firms and corporations.

The Commission believes that the proposed rule change is consistant with the requirements of the Act and the Rules thereunder. In particular, the Commission believes that the proposal is consistant with the just and equitable principles of trade requirements of section 6(b)(5) of the Act.[7] In this regard, the Amex's proposal will provide accurate and up-to-date information with respect to the Exchange's admissions process. In addition, the Commission believes that by requiring substantially similar membership requirements and admissions procedures for all prospective members the proposed rule change is not designed to permit unfair discrimination between brokers or dealers on the Exchange. The Commission also believes that the proposal is consistant with sections 6 (b)(2) and (c)[8] of the Act because the rules establish procedures whereby a registered broker-dealer or a natural person associated with a registered broker-dealer may apply to become a member of the Exchange or to become associated with a member.

It is therefore ordered, pursuant to section 19(b)2 of the Act,[9] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Dated: September 13, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22422 Filed 9-21-89; 8:45 am]

BILLING CODE 8010-01-M

[4] The amount of the fee is set forth in Article VII of the Exchange Constitution.

[5] The amount of this contribution is set forth in article IX of the Exchange Constitution.

[6] The amount of this fee is set forth in article VII of the Exchange Constitution.

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 15 U.S.C. 78f-(b)(2) and (c) (1982).

[9] 15 U.S.C. 78s(b)(2) (1982).

[10] 17 CFR 200.300-3(a)(2) (1988).

[34-27246; (File No. SR-NSCC-89-14)]

Self Regulatory Organizations; National Securities Clearing Corporation; Order Approving A Proposed Rule Change on a Temporary Basis With Respect to National Securities Clearing Corporation's Reconfirmation and Repricing Service

September 13, 1989.

On August 30, 1989, the National Securities Clearing Corporation ("NSCC") filed a proposed rule change (SR-NSCC-89-14) with the Commission pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, [1] concerning NSCC's Reconfirmation and Repricing Service ("RECAPS"). Notice of the proposal was published in the **Federal Register** on September 10, 1989 [2] to solicit comments from interested parties. As discussed below, the Commission is approving the proposed rule change on a temporary basis until December 31, 1989.

I. Introduction

NSCC proposes to make certain revisions to its rules concerning RECAPS. NSCC proposes to make participation in RECAPS mandatory for members whose RECAPS-eligible transactions [3] were previously compared through NSCC's facilities or other facilities. NSCC also proposes to change the procedures for processing RECAPS trade data and to allow members to submit RECAPS input through personal computers. These changes are described in greater detail below.

[1] 15 U.S.C. 78a(s) (1981).

[2] *See* Securities Exchange Act Release No. 27212 (September 1, 1989); 54 FR 38023.

[3] At present, RECAPS—eligible transactions are fails in previously compared municipal securities trades that are at least fifteen business days old and fails in previously compared equity securities and zero-coupon bonds trades that are at least five business days old.

II. Description

NSCC's RECAPS service is a facility through which NSCC members voluntarily submit data via tape transmission to NSCC's main office or paper input at one of NSCC's branch offices regarding transactions in RECAPS—eligible securities which have previously been compared, but have failed to settle. Under NSCC's current rules, [4] NSCC members periodically [5] submit RECAPS fail information on Friday. On Saturday, NSCC produces RECAPS contracts containing the standard contract categories (compared, uncompared, advisory). Members can correct and resolve trades and submit advisories and as-of trades on Saturday. NSCC calculates a cash adjustment for fails in RECAPS-eligible securities by repricing (i.e. marking to market) such securities based on the closing price of such securities on Friday. On Sunday, NSCC distributes a second set of RECAPS contracts which reflect the additional input received on Saturday. On Tuesday, members settle their cash adjustments and reconfirmed contractual obligations.

NSCC proposes to make participation in RECAPS mandatory for members whose RECAPS—eligible transactions have already been compared through NSCC's facilities or other facilities. NSCC will advise members of transactions eligible for RECAPS no less than three months prior to the next RECAPS cycle, and of the age of fails eligible for submission no less than six weeks prior to such cycle. NSCC will run RECAPS cycles quarterly, or more frequently as circumstances may require.

NSCC also proposes to change the time frames for processing RECAPS trade data and for settlement of RECAPS—eligible transactions. These revisions will establish two settlement cycles for RECAPS—eligible transactions. Members will input RECAPS fail information ("RECAPS Input") on Friday. NSCC will distribute RECAPS contract sheets and settlement information on Sunday for compared RECAPS Input. These compared transactions will settle on Tuesday. Members will also submit deletes of RECAPS Input, advisories and as-of trades on Monday.[6] ("Supplemental RECAPS Input"). On Tuesday, NSCC will distribute RECAPS contract sheets and settlement information for compared Supplemental RECAPS Input. These compared transactions will settle on Wednesday.[7]

Finally, NSCC also proposes to change the methods by which its members submit RECAPS data. Currently, members may submit RECAPS information by computerized tape through service bureaus. Members may also submit RECAPS information through paper input to NSCC's branch offices where information is then keypunched. NSCC proposes to allow members to submit RECAPS information through personal computer. Members who want to submit such information through personal computer must have computers that meet certain minimum hardware and software requirements.[8]

III. Rationale

In its filing, NSCC stated that its proposal is consistent with Section 17A of the Act because it facilitates the prompt and accurate clearance and settlement of securities transactions for which NSCC is responsible.

IV. Discussion

RECAPS is a pilot program offered by NSCC to provide for the reconfirmation and repricing of fails. At several times during the last few years, NSCC members have participated in RECAPS on a voluntary basis. This service has helped member broker-dealers confirm outstanding contracts and reprice (i.e. mark-to-the-market) payment and delivery obligations.[9]

NSCC's proposal would establish RECAPS as a permanent service, mandate its use, and provide a new way for members to submit RECAPS data. The Commission believes that additional experience from RECAPS operations is necessary to evaluate NSCC's proposal. NSCC has filed a related proposal concerning its telecommunications system.[10] Temporary approval of NSCC's proposal to allow members to submit RECAPS data via personal computer will aid the Commission in reviewing NSCC's telecommunications filing. Continued operations of RECAPS on a voluntary basis will allow the Commission to determine whether the system design, particularly the dual settlement cycle built into RECAPS, is efficient and prudential. Thus, pending final Commission approval, participation in RECAPS will continue to be voluntary for NSCC members.[11]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that NSCC's proposed rule change (SR–NSCC–89–14) be, and hereby is, approved on a temporary basis until December 31, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 89–22378 Filed 9–21–89; 8:45 am]
BILLING CODE 8010–01–M

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[4] *See generally* NSCC Procedure G.

[5] Under NSCC's current rules, RECAPS cycles occur at the time determined by NSCC. NSCC proposes to process RECAPS cycles on a quarterly basis. NSCC will also have the authority to offer RECAPS services more frequently as circumstances may require.

[6] A "delete" is a process used to delete trades mistakenly compared through NSCC. An "advisory" is a procedure by which one firm's version of a trade is accepted by the firm named by such firm as the counterparty to such trade. The term "as-of" is used to describe a trade submitted for processing after the actual trade date that relates back to such date.

[7] NSCC's proposed rule describes the time frames for RECAPS input, distribution of contract sheets and settlement information, and settlement days in general terms to allow NSCC to vary the RECAPS processing schedule according to its members' needs. The time frames discussed herein are those NSCC currently intends to use after the Commission approves its proposal.

[8] NSCC will supply the modem and software package containing the menu of controls and RECAPS program. Members must have a personal computer that is compatible with NSCC's specifications. Members must have a computer with the capability to add an additional modem that is designed to transfer information through dial-up lines to NSCC. Members must also have a wide carriage printer which is capable of printing 132 positions per line. Once this system is operational, members will transmit RECAPS data through dial-up line for processing with other RECAPS data. Under NSCC's proposal, members may only input RECAPS data via personal computer; output of data will not be available.

[9] All transactions submitted to RECAPS are repriced even if they are not reconfirmed and settled during the RECAPS cycle. Under Rule 15c3–1(c)(2)(ix), a broker-dealer must adjust its net capital by deducting from the contract value of each failed to deliver contract which is outstanding 5 business days or longer a percentage of the market value of the underlying security equal to the haircut prescribed by Rule 15c3–1 for such securities. This deduction, however, must be increased to the extent the contract price of such security exceeds its fair market value, and decreased to the extent the contract price of such security is less than its fair market value. Thus, even though a transaction may not settle during the RECAPS cycle, NSCC's repricing of such transaction assists a member broker-dealer in obtaining a more accurate picture of its net capital position.

[10] *See* Securities Exchange Act Release No. 27143 (August 15, 1989) 54 FR 34845.

[11] During the temporary approval period, the Commission shall require NSCC to provide such information as the Commission deems necessary to assess the impact of NSCC's proposal.

Issuer Delisting; Application To Withdraw From Listing and Registration; Computer Consoles, Inc., 7¾% Convertible Subordinated Debentures Due 1998 (File No. 1-3738)

September 15, 1989.

Computer Consoles, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On February 10, 1989, following a tender offer for such common stock and merger, the Company became a wholly-owned subsidiary of ICL Inc. Pursuant to a Form 25 filed by the Amex on February 13, 1989, the common stock of the Company was removed from listing on the AMEX and registration pursuant to section 11(b) of the Exchange Act, effective February 17, 1989.

As a result of such tender offer and merger, the Debentures are no longer convertible into the common stock of the Company but are instead convertible into a right to receive $601.50 in cash per $1,000 principal amount of Debentures converted, as set forth to a Supplemental Indenture, dated as of February 10, 1989.

Any interested person may, on or before October 6, 1989, submit by letter to the Secretary of the Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-22421 Filed 9-21-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/1309]

Study Group 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 11 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on September 26, 1989 at the National Association of Broadcasters, 1771 N Street, NW., Washington, DC. The meeting will begin at 10:00 a.m. in the V.T.W. Board Room on the first floor. This notice does not meet the 15-day notice requirement, since there is an urgent need to hold the meeting prior to departure of key participants in connection with U.S. delegation duties overseas.

Study Group 11 deals with television broadcasting. The purpose of the meeting is to consider the latest information on colorimetry parameters and scanning parameters, in particular, that developed by the ATSC and the CCIR IWP 11/6 Group of Experts for the Draft Recommendation, A Number of Basic Parameter Values For The HDTV Standard for the Studio and for International Program Exchange, and establish a recommended U.S. position on these matters for the October meetings of CCIR IWP 11/6 and CCIR Study Group 11 as authorized by the U.S. CCIR National Committee on August 30, 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. John W. Reiser, Federal Communications Commission, Washington, DC 20554; telephone (202) 254-3394.

Dated: September 14, 1989.

Richard E. Shrum,

Chairman, U.S. CCIR National Committee.

[FR Doc. 89-22374 Filed 9-21-89; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 15, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 46493.

Date Filed: September 14, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 14, 1989.

Description: Application of MG Marketing Enterprises, S.A., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit authorizing it to engage in nonscheduled, including charter, foreign air transportation of property and mail between points in the Dominican Republic and Miami, Florida; San Juan, Puerto Rico; and New York, New York, with all flights to the United States originating or terminating in the Dominican Republic.

Docket Number: 42997.

Date Filed: September 13, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: October 11, 1989.

Description: Amendment No. 3 to the Application of Florida West Airlines, Inc. further amends paragraphs 3 and 4 of the initial Application and Amendments No. 1 and 2 by adding new points and additional information.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-22379 Filed 9-21-89; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[CAB Nos. 465 and 409]

Complaints of American Association of Discount Travel Brokers to American Airlines Passenger Tariffs

AGENCY: Department of Transportation.

ACTION: Notice of Order 89-9-25, Dockets 46188 and 46192.

SUMMARY: The Department denied the complaint by the American Association of Brokers against the use of revision tariffs that include American Airlines' "frequent flyer" rules. The complainant alleged various filing violations, including incorporation by reference of other rules in the American program. American argued that these matters are

in tariffs for information only and are matter of private contract. The Department determined that no filing violation occurred and that these matters are not required to be filed in tariffs for substantive review.

FOR FURTHER INFORMATION CONTACT: Mr. Lawrence Myers, Office of the General Counsel, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–9183.

Dated: September 13, 1989.

Jeffrey N. Shane,

Assistant Secretary for Policy and International Affairs.

[FR Doc. 89–22380 Filed 9–21–89; 8:45 am]

BILLING CODE 4910–62–M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 183
Friday, September 22, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, October 2, 1989.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations.
3. Proposed Final Procedural Rule, 29 C.F.R. Section 1613.215(a)(7)—Federal Sector Cancellation of Complaints for Failure to Accept Full Relief.
4. Proposed Revisions to Equal Employment Opportunity—Management Directive 107 (EEO–MD 107), Federal Sector Complaint Processing Manual.

Closed Session

1. Litigation Authorization: General Counsel Recommendations.
2. Agency Adjudication and Determination on the Record of Federal Agency Discrimination Complaint Appeals.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 663–7100 at any time for information on these meetings.)

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–7100.

This Notice Issued September 20, 1989.

Frances M. Hart,

Executive Officer, Executive Secretarial.

[FR Doc. 89–22609 Filed 9–20–89; 3:50 pm]

BILLING CODE 6750–06–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 9:00 a.m. on Friday, September 22, 1989, to consider the following matters:

Memorandum and resolution re: Proposed amendments to the Corporation's rules and regulations, in the form of an interim rule, Part 357, entitled "Asssessment of Fees Upon Entrance to or Exit from the Bank Insurance Fund or the Savings Association Insurance Fund," which interim rule prescribes the entrance fee that must be paid by insured depository institutions that participate in "conversion transactions" (transfers or switches between the two deposit insurance funds), pursuant to the provisions of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

Memorandum and resolution re: Final amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which amendments require each insured savings association converting to State nonmember insured bank status to obtain prior written consent from the Corporation.

Memorandum and resolution re: Reconstitution of standing committees.

The meeting will be held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 19, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–22506 Filed 9–20–89; 9:20 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of a Matter To Be Withdrawn From Consideration at an Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the following matter will be withdrawn from the "discussion agenda" for consideration at the open meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 9:00 a.m. on Friday September 22, 1989, in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC:

Memorandum and resolution re: Final amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which amendments require each insured savings association coverting to State nonmember insured bank status to obtain prior written consent from the Corporation.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898–3813.

Dated: September 20, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89–22588 Filed 9–20–89; 2:00 pm]

BILLING CODE 6714–01–M

POSTAL SERVICE BOARD OF GOVERNORS

Notice of a Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 1:00 p.m. on Monday, October 2, 1989, and at 8:30 a.m. on Tuesday, October 3, 1989, in Norman, Oklahoma. The October 2 meeting, at which the Board will consider: (1) A capital investment for a dormitory at the U.S.P.S. Technical Training Center in Norman, Oklahoma, and (2) discuss possible strategies in collective bargaining negotiations, is closed to the public. (See 54 FR 38586, September 19, 1989.) The October 3 meeting is open to the public and will be held in Conference Rooms A, B, D and E at the U.S.P.S. Technical Training Center, 2701 East Imhoff Road. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

Agenda

Monday Session

October 2—1:00 p.m. (Closed)

1. Capital Investment:
   a. Dormitory for Norman Technical Training Center. (Stanley W. Smith, Assistant Postmaster General, Facilities Department, and Elwood A. Mosley,

Assistant Postmaster General, Training and Development Department)
2. Preparations for Collective Bargaining.

Tuesday Session

October 3—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, September 11–12, 1989.
2. Remarks of the Postmaster General.
3. Board of Governors 1990 Meeting Schedule. (David F. Harris, Secretary to the Board of Governors)
4. Office of the Governors FY 1990 Budget. (Mr. Harris)
5. Consideration of Amendments to the Bylaws of the Board of Governors. (Louis A. Cox, General Counsel)
6. Report on Administrative Services Group Programs. (Mitchell H. Gordon, Senior Assistant Postmaster General, Administrative Services Group)
7. Report on EEO/Affirmative Action Programs in the Oklahoma City Division. (Willie H. Hathman, Field Division General Manager/Postmaster)
8. Capital Investment:
   a. Van Nuys, California, General Mail Facility. (Mr. Smith)
9. Tentative Agenda for November 6–7, 1989, meeting in Washington, DC.

David F. Harris,

Secretary.

[FR Doc. 89–22515 Filed 9–20–89; 10:09 am]

BILLING CODE 7710–21–M

RESOLUTION TRUST CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Resolution Trust Corporation's Board of Directors will meet in open session at 3:30 p.m. on Tuesday, September 26, 1989, to consider the following matters:

Resolution regarding the existence of severe conditions in the thrift industry and the use of the Federal preemption of inconsistent State laws.

An interim statement of principles of ethical conduct for RTC contractors.

The meeting will be held in the Amphitheater of the RTC Building located at 801—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. John M. Buckley, Jr., Executive Secretary of the Corporation, at (202) 898–3604.

Dated: September 19, 1989.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 89–22507 Filed 9–20–89; 9:30 am]

BILLING CODE 6714–01–M

September 20, 1989.

U.S. COMMISSION ON CIVIL RIGHTS

PLACE: Telephonic meeting to participants in different locales. Some participants will be present at the Commission's Offices at 1121 Vermont Avenue NW., Washington, DC 20425.

DATE AND TIME: Friday, September 22, 1989, 8:00 a.m.–9:30 a.m.

STATUS OF MEETING: Closed to the public.

MATTER FOR DISCUSSION: Consideration of the civil action filed by John Eastman against the Commission.

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications Division, (202) 376–8312.

Jeffrey P. O'Connell,

Acting Solicitor, (202) 376–8514.

[FR Doc. 89–22655 Filed 9–21–89; 11:44 am]

BILLING CODE 6335–01–M

Corrections

Federal Register
Vol. 54, No. 183
Friday, September 22, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1250

[Docket No. PY-89-003]

Egg Research and Promotion

Correction

In rule document 89-21676 beginning on page 38206 in the issue of Friday, September 15, 1989, make the following correction:

§ 1250.523 [Corrected]

On page 38208, in the third column, in § 1250.523(d)(2) introductory text, in the sixth line, "for" should read "form".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[BERC-638-GN]

Medicare Program; National Coverage Decisions

Correction

In notice document 89-19426 beginning on page 34555 in the issue of Monday, August 21, 1989, make the following correction:

1. On page 34597, in the table "DURABLE MEDICAL EQUIPMENT REFERENCE LIST", the 15th line from the bottom of the page should read "Deny-self-help device; not primarily medical in nature (§ 1861(n) of the Act)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-08-4120-11; WYW117027]

Cheyenne, WY; Invitation for Coal Exploration License; Correction

Correction

In notice document 89-19438 beginning on page 34617 in the issue of Monday, August 21, 1989, make the following correction:

On page 34617, in the first column, under "**SUPPLEMENTARY INFORMATION**", after the colon in the last line, insert "Sec. 19: Lots 5 - 20".

BILLING CODE 1505-01-D

Federal Register

Friday
September 22, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 1 and 33

Airworthiness Standards: Aircraft Engines; Proposal for New One-Engine-Inoperative (OEI) Ratings, Definitions and Type Certification Standards; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 1 and 33

[Docket No. 26019; Notice No. 89-27]

RIN 2120-AD21

Airworthiness Standards: Aircraft Engines; Proposal for New One-Engine-Inoperative (OEI) Ratings, Definitions and Type Certification Standards

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Aerospace Industries Association of America, Inc. (AIA), by letter of September 20, 1984, petitioned the FAA to provide new one-engine-inoperative (OEI) ratings for rotorcraft engines and their application to rotorcraft. This notice responds to that petition and proposes to define and establish type certification standards for new OEI ratings for rotorcraft engines. The FAA, for administrative purposes, is publishing two NPRMs in response to the AIA petition for rulemaking. A separate NPRM addresses the proposed changes to rotorcraft type certification. See this issue of the **Federal Register** for the corresponding NPRM covering rotorcraft type certification which should be considered when reviewing these proposals.

DATES: Comments must be received on or before March 27, 1990.

ADDRESS: Comments on the proposal may be delivered or mailed in triplicate to: Federal Aviation Administration, Office of the Chief Council, Attention: Rules Docket, Docket No. 26019, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked Docket No. 26019.

Comments may be inspected in the Rules Docket, Room 916, between 8:30 a.m. and 5:00 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Donald F. Perrault, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, telephone (617) 273-7081.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, or economic effects that might result from the adoption of the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Communications should identify the regulatory docket or notice number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26019." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Public Meeting

A public meeting is being scheduled to discuss the proposals in this notice; the date and location will be announced in a forthcoming issue of the **Federal Register.**

Availability of NPRM

Any person may contain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA-230), 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on the mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

AIA proposes to add new OEI ratings applicable to turbine engines powering Category A and multiengine Category B rotorcraft. In a Category A operation, a multiengine turbine powered rotorcraft must have the ability to either continue flight or land within a demonstrated field size in the event of the failure of an engine. In a Category B operation, the rotorcraft would not have sufficient residual power if one engine were lost to continue its flight and would, therefore, require safe landing areas throughout its flight path. Category A rotorcraft mission payloads are limited by the power available from the remaining operating engine(s) in the event one engine fails during takeoff or landing. The maximum engine power rating available under current part 33 rules is the 2-½ Minute OEI rating. This proposal would establish 30-Second and 2-Minute OEI ratings at higher power levels than currently available. These new ratings would be strictly optional.

AIA states that 3 levels of OEI ratings are required to fully satisfy all aspects of Category A operations as follows:

—A short burst of power to as high a level as possible to complete the takeoff, or effect a rejected takeoff, should an engine failure occur at the critical decision point so that the rotorcraft can lift clear of any obstructions in the flight path and climb out, or alternatively, to reject the takeoff. It is estimated that this power would not be required for more than 30 seconds at any one time, so this is referred to as the 30-second OEI Power rating. It is further anticipated that this would be a limited-use rating, i.e., prescribed maintenance action will be required after its use, and some positive means would be required to record its use.

—A somewhat longer period, approximately 2 minutes, at a lesser power level, on the order of 115 percent of Takeoff Power, to complete the climb out from takeoff to a safe altitude and airspeed. This power is referred to as the 2-Minute OEI Power rating and similarly will require prescribed maintenance action after its use, and a record that it has been used. In addition to takeoff flight/land back, the 30-Second/2-Minute OEI ratings will also be usable to accomplish a balked landing maneuver and a subsequent approach and hover/landing. Thus, one flight could encompass up to three uses of the 30-Second OEI and 2-Minute OEI ratings.

—An unlimited duration OEI Continous Power rating to maintain a safe altitude enroute. The power level of this rating would approximate that of the Takeoff rating and would be selected by the engine manufacturer to be compatible with the mission performance made possible by the 30-Second OEI and 2-Minute OEI ratings. The unlimited duration of the OEI Continuous rating would permit the scheduling of flights for extended

range over water missions, such as those for far offshore oil rig support. The present 30-Minute OEI rating precludes the scheduling of such flights beyond 30 minutes from a suitable landing area.

The Rotocraft Regulatory Review Program (Notice No. 3) addressed a very similar proposal for a time-unlimited enroute OEI rating called "Rated Continuous OEI power". This was subsequently published as Final Rule No. 3 of the Rotocraft Regulatory Review Program in the Federal Register on September 2, 1988, 53 FR 34198. Therefore, FAA has determined that AIA's petition, insofar as it relates to "OEI Continuous Power" rating, should not be pursued in this proposal.

It is noted that AIA also petitioned to amend § 33.14, Start-stop cyclic stress (low-cycle fatigue). FAA has considered this petition and has determined that existing § 33.14 is adequate to address the 30-Second OEI and 2-Minute OEI ratings without additional rulemaking. FAA findings of compliance with existing § 33.14 are based, in part, on the applicant's definition of the flight cycle profile or equivalent representation of engine usage. Implementation of this aspect of the rule, in the case of OEI rated engines, requires addressing the use of OEI ratings at a realistic frequency representative of actual (expected) in-service use. Service experience, to date, with OEI rated engines is that use of OEI ratings following a true case of one engine having failed is an extremely rare event. Thus it is considered totally unrealistic to mandate the use of OEI ratings as a constituent of each flight cycle. However, the applicant is still required, in all cases, to account for low cycle fatigue effects based on the anticipated usage of OEI ratings during the life of the engine. This could be accomplished, for example, by adding a reasoned finite number of cycles to the expended life of the appropriate components for each OEI power excursion.

In the process of drafting these proposed rule changes, numerous meetings were held with industry groups and the European Airworthiness Authorities in an attempt to identify and address all the issues.

Regulatory Evaluation

A regulatory evaluation has been prepared to provide a basis for the finding required by the Regulatory Flexibility Act of 1980 and as directed by the applicable requirements of section 2 of Executive Order 12291 (46 FR 13193, February 19, 1981) and by DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This regulatory evaluation assesses the economic impact of proposed changes to parts 1 and 33 of the FAR's which relate to engine certification. This NPRM is a result of a petition in September 1984, by the AIA to provide new OEI ratings for rotorcraft turbine engines. The AIA proposed these changes, in part, to provide for higher engine powers in operating transport Category A rotorcraft in order to improve rotorcraft productivity. In a Category A operation, a multiengine turbine powered rotorcraft must have the ability to either continue flight or land within a demonstrated field size in the event of the failure of an engine. In a Category B operation, the rotorcraft would not have sufficient residual power if one engine were lost to continue its flight and would, therefore, require safe landing areas throughout its flight path. Category A rotorcraft mission payloads are limited by the power available from the remaining operating engine(s) in the event one engine fails during takeoff or landing. The maximum engine power rating available under current part 33 rules is the 2½ Minute OEI rating. This proposal would establish 30-Second OEI and 2-Minute OEI ratings at higher power levels than currently available. These new ratings would be strictly optional. These new proposed OEI power ratings would afford rotorcraft manufacturers an opportunity to install higher rated engines in their products. The principal operational benefits would be the ability to carry higher payloads from existing fields or to takeoff from smaller fields with current payloads, which should enable more Category B operators to use their rotorcraft for Category A operations, and also increase the potential for all operators to use more efficient and profitable routes. The testing costs associated with obtaining this rating should be viewed as the price of an additional capability and would be evaluated by the rotorcraft manufacturer based on market potential. It is not possible to quantify the extent of the net operational benefits that would be realized by the operators because the number of products that would be certified to this standard cannot be estimated. The FAA is able to conclude, however, that the proposal would not have a negative economic impact on manufacturers or operators. Because these are optional ratings, manufacturers will provide this capability only if the additional costs can be recovered in the market place.

The industry maintains that safety after an engine failure under the proposal regulations would be at least equivalent to operational safety under the current regulations. This assessment is based mainly on a proposed requirement for an engine inspection following one mission cycle of rating use. All engine parts that may not be suitable for further use will need to be discarded and replaced in order to maintain the continued airworthiness of the engine. The FAA believes that the extant minimum level of engine airworthiness will be maintained on adoption of these proposals by virtue of the proposed and the existing design, analysis, and test certification requirements.

The FAA has also determined that the proposed rule changes will not have a significant economic impact on a substantial number of small entities. The FAA's criteria for a small manufacturer of engines is one employing less than 375 employees, a substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposed rules; and a significant impact is one having an annual cost of more than $23,600 (1987 U.S. dollars) per manufacturer.

A review of domestic engine manufacturers indicates that none meet the size threshold of 375 employees or less. The proposed amendments to 14 CFR parts 1 and 33 will, therefore, not affect a substantial number of small entities.

International Trade Impact Analysis

The proposals in this notice would have little or no impact on trade for both U.S. firms doing business in non-U.S. countries and non-U.S. firms doing business in the U.S. In the U.S., non-U.S. manufacturers would have the option of designing engines and rotorcraft capable of satisfying the new OEI ratings and would, therefore, not be at a competitive disadvantage vis-a-vis domestic manufacturers. Because of the large U.S. market, non-U.S. manufacturers are likely to certify their engines to U.S. rules, which would limit any competitive advantage U.S. manufacturers might gain in non-U.S. markets.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus in accordance with Executive Order 12612,

it is determined that such regulation does not have federalism implications warranting the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this proposed regulation is not major under Executive Order 12291, or significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities since the turbine engine manufacturers that may elect to certificate engines with these new OEI ratings are all large entities under the criteria of the Regulatory Flexibility Act. The draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption **"FOR FURTHER INFORMATION CONTACT"**. For the reasons stated in the regulatory evaluation, I certify that these regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. In addition, these proposals, if adopted, would have little or no impact on trade opportunities for U.S. firms doing business overseas or for non-U.S. firms doing business in the United States.

List of Subjects

14 CFR Part 1

Airmen, Flights, Balloons, Parachutes, Aircraft pilots, Pilots, Transportation, Agreements, Kites, Air safety, Safety, Aviation safety, Air transportation, Air carriers, Aircraft, Airports, Airplanes, Helicopters, Rotorcraft, Heliports, Engines, Ratings.

14 CFR Part 33

Engines, Rotorcraft, Air transportation, Aircraft, Aviation safety.

The Proposed Amendments

Accordingly, the FAA proposes to amend parts 1 and 33 of the Federal Aviation Regulations (14 CFR parts 1 and 33) as follows:

PART 1—DEFINITIONS AND ABBREVIATIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 1347, 1348, 1354(a) 1357(d)(2), 1372, 1421 through 1430, 1432, 1442, 1443, 1472, 1510, 1522, 1652(e), 1655(c), 1657(f); 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By amending § 1.1 by adding the definitions of "Rated 30-Second OEI Power," and "Rated 2-Minute OEI Power," after the definition of "Rated 2½-Minute OEI power," to read as follows:

§ 1.1 General definitions.

* * * * *

"Rated 30-Second OEI Power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under part 33 of this chapter, for continued one-flight operation after the failure of one engine in multiengine rotorcraft, limited to periods of use no longer than 30 seconds, and followed by mandatory inspection and prescribed maintenance action.

"Rated 2-Minute OEI Power," with respect to rotorcraft turbine engines, means the approved brake horsepower developed under static conditions at specified altitudes and temperatures within the operating limitations established for the engine under part 33 of this chapter, for continued one-flight operation after the failure of one engine in multiengine rotorcraft, limited to periods of use no longer than 2 minutes, and followed by mandatory inspection and prescribed maintenance action.

* * * * *

Explanation: The proposed additions of Rated 2-Minute OEI Power and Rated 30-Second OEI Power are part of a series of changes to FAR parts 27, 29, and 33, in addition to this part, to create these new OEI ratings which will permit increased productivity of multiengine turbine powered rotorcraft.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

3. The authority citation for part 33 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

4. By amending § 33.7 by redesignating paragraph (c)(1)(viii) as (c)(1)(x); and by adding new paragraphs (c)(1)(viii) and (c)(1)(ix) to read as follows

§ 33.7 Engine ratings and operating limitations.

* * * * *

(c) * * *

(viii) Rated 2-Minute OEI Power;

(ix) Rated 30-Second OEI power;

* * * * *

Explanation: The proposed additions of Rated 2-Minute OEI and Rated 30-Second OEI powers are part of a series of changes to FAR parts 1, 27, and 29, in addition to this part, to create these new OEI ratings which will permit increased productivity of multiengine turbine powered rotorcraft.

§ 33.27 [Amended]

5. By amending §33.27 to revise paragraph (c)(1) and the undesignated paragraph following (c)(2)(vi) to read as follows:

* * * * *

(c) The most critically stressed rotor component (except blades) of each turbine, compressor, and fan, including integral drum rotors and centrifugal compressors in an engine or turbo-supercharger, as determined by analysis or other acceptable means, must be tested:

(1) For a period of 5 minutes at the maximum rating's steady-state operation temperature limit, excluding the 30-Second OEI and 2-Minute OEI conditions, and except as provided in paragraph (c)(2)(iv) of this section; and additionally for engines with 30-Second OEI and 2-Minute OEI ratings, using a separate test vehicle if desired, for a period of 2½-minutes at the maximum operating temperature limit for the 30-Second OEI rating condition except as provided in paragraph (c)(2)(iv) of this section; and,

* * * * *

Following the test, each rotor must be within approved dimensional limits for an overspeed condition and may not be cracked; except that following the test based on the 30-Second OEI rating condition, growth and distress beyond the limits for an overspeed condition will be permitted provided the engine is shown by analysis or test, as found necessary by the Administrator, to be suitable for continued service use to complete the worst case intended flight profile associated with application of the 30-Second OEI rating.

Explanation: A second overspeed test based on the 30-Second OEI rating is proposed. The test time would be 2½ minutes based on the consideration that the 5 minute demonstration for an engine whose maximum rating is 5-minute takeoff is one for one, and for a 2½ Minute OEI rated engine, it is two for one. It would be 5 times the rating period for the 30-Second OEI rated engines. The proposed acceptance criteria, following the overspeed test based on the 30-Second OEI rating, are less severe since a mandatory inspection will be required after each in-service use of the 30-Second OEI rating. However, following this second overspeed test, the applicant would be required to conduct further analysis and testing to clearly substantiate that the engine is suitable for continued service use to complete the worst case intended flight profile associated with application of the 30-Second OEI rating.

6. By amending § 33.29 to add new paragraph (c) as follows:

§ 33.29 Instrument connection.

* * * * *

(c) Each rotorcraft turbine engine having a 30-Second OEI power rating and a 2-Minute OEI power rating must have provision for a means to determine in a positive manner that the engine has been operated at these ratings and the elapsed time of operation at each rating.

Explanation: These ratings are intended for use under abnormal conditions, and the power levels achieved are predicated upon single-mission usage followed by mandatory inspection. A latching type of indicating system is considered necessary to advise the operator that the engine had been operated at the 30-Second OEI rating and/or at the 2-Minute OEI rating, including the elapsed time of such operation. The system should require a discrete set of actions by maintenance personnel for resetting to serve as a reminder against further engine operation without having taken the prescribed inspection/maintenance actions.

7. By amending § 33.67 to add new paragraph (d) as follows:

§ 33.67 Fuel system.

* * * * *

(d) Engines having a 30-Second OEI rating must incorporate means for automatic control of 30-Second power.

Explanation: The goal of this proposal is to ensure capability to safely operate, without pilot intervention, the engine within all of its approved limits when at the 30-Second OEI rating is intended to provide a rotorcraft with a power reserve in the event of one engine becoming inoperative. The flight and operating conditions requiring use of the 30-Second OEI rating would create a very high pilot workload to maintain safe flight. In such circumstances, the pilot will not be required nor expected to monitor engine instrumentation and modulate engine controls. Therefore, to be of practical use, the 30-Second OEI rating must be applied and controlled by automatic devices that require no input or control by the pilot other than activation and termination commands. Specific engine designs may or may not require limiters for the parameters of output shaft torque, output shaft speed, gas producer speed, and gas path temperature to achieve this capability. The actual control mechanism, the parameters used, the response rate preferred, etc., will be determined by the engine manufacturer to suit the individual case. However, if a torque limiter is used as a power control device it should not inhibit attaining 30-Second OEI power.

8. By amending § 33.85 to add new paragraph (c) as follows:

§ 33.85 Calibration tests.

* * * * *

(c) Measurements taken during the endurance test described in paragraphs 33.87(e) (1) through (8) may be used in showing compliance with the requirements for OEI ratings limited to less than 2½ minutes duration.

Explanation: The endurance test proposal for engines, for which the 30-Second OEI and 2-Minute OEI ratings are desired, is designed to conservatively assure operational integrity of the engines. Extended engine operation at these ratings for purposes of calibration testing would exceed the ratings' time limits and significantly affect total time at those conditions. FAA believes that the calibration test requirements of the short time OEI ratings (less than 2½ minutes) could be satisfactorily substantiated during the endurance test without compromising the goals of the calibration test.

9. By amending § 33.87 by revising the introductory text of paragraph (a); by revising the text of paragraph (a)(8); by redesignating paragraph (f) as paragraph (g) without text change; and by adding a new paragraph (f) as follows:

§ 33.87 Endurance test.

(a) *General.* Each engine must be subjected to an endurance test that includes a total of at least 150 hours of operation and, depending upon the type and contemplated use of the engine, consists of one of the series of runs specified in paragraphs (b) through (g) of this section, as applicable. For engines tested under paragraph (b), (c), (d), or (e) of this section, the prescribed 6-hour test sequence must be conducted 25 times to complete the required 150 hours of operation. Engines for which the 30-Second OEI and 2-Minute OEI ratings are desired must be further tested under paragraph (f) of this section. The following test requirements apply:

* * * * *

(8) If the number of occurrences of either transient rotor shaft overspeed or transient gas overtemperature is limited, that number of the accelerations required by paragraphs (b) through (g) of this section must be made at the limiting overspeed or overtemperature. If the number of occurrences is not limited, half the required accelerations must be made at the limiting overspeed or overtemperature.

* * * * *

(f) Rotorcraft engines for which 30-Second OEI and 2-Minute OEI ratings are desired. For each rotorcraft engine for which 30-Second OEI and 2-Minute OEI power ratings are desired, and following completion of the tests under paragraph (b), (c), (d), or (e), of this section, the applicant may disassemble the tested engine to the extent necessary to show compliance with the requirements of § 33.93(a). The tested engine must then be reassembled using the same parts used during the test runs of paragraph (b), (c), (d), or (e) of this section, except those parts described as consumables in the Instructions for Continued Airworthiness. The applicant must then conduct the following test sequence four times for a total time of not less than 120 minutes:

(1) *Takeoff power.* Three minutes at rated Takeoff power.

(2) *30-Second OEI power.* Thirty seconds at rated 30-Second OEI power.

(3) *2-Minute OEI power.* Two minutes at rated 2-Minute OEI power.

(4) *30-Minute OEI power, Continuous OEI power, or Maximum Continuous power.* Five minutes at rated 30-Minute OEI power, rated Continuous OEI power, or rated Maximum Continuous power, whichever is greatest, except that during the first test sequence, this period shall be sixty-five minutes.

(5) *Idle.* One minute at Idle.

(6) *30-Second OEI power.* Thirty seconds at rated 30-Second OEI power.

(7) *2-Minute OEI power.* Two minutes at rated 2-Minute OEI power.

(8) *Idle.* One minute at Idle.

* * * * *

Explanation: This proposal establishes the endurance test requirements for rotorcraft engines for which the 30-Second OEI and 2-Minute OEI ratings are desired. These ratings are proposed to be tested as a 2-hour supplementary test added to the basic 150-hour endurance test for those rotorcraft engines for which the 30-Second OEI and 2-Minute OEI ratings are desired. Note that the power level of test condition (f)(4) is intended to be consistent with the highest rated approved en-route (OEI or non-OEI) power condition. Note further that the applicant may elect to inspect the engine after the basic 150-hour test and before the supplementary test. The concept of the 30-Second OEI and the 2-Minute OEI ratings is that of "limited use/mandatory inspection ratings." As such, it must be assumed that some engine parts or components may not be suitable for further use and will need to be discarded and replaced after application of these ratings. The inspection standards applied after the supplementary endurance test of these ratings take this fact into account.

10. By amending § 33.88 by revising and redesignating the existing text as paragraph (a) and adding new paragraphs (b), (c), and (d) as follows:

§ 33.88 Engine overtemperature test.

(a) Each engine must be run for 5 minutes at maximum permissible r.p.m. with the gas temperature at least 75 °F (42 °C) higher than the maximum rating's steady-state operating limit, excluding maximum values of r.p.m. and gas temperature associated with the 30-Second OEI and 2-Minute OEI ratings. Following this run, the turbine assembly must be within serviceable limits.

(b) Each engine for which 30-Second OEI and 2-Minute OEI ratings are desired, that does not incorporate a temperature limiter, must be run for a period of 5 minutes at the maximum

permissible power-on r.p.m. with the gas temperature at least 75 °F (42 °C) higher than the 30-Second OEI rating's operating limit. Following this run, the turbine assembly may exhibit distress beyond the limits for an overtemperature condition provided the engine is shown by analysis or test, as found necessary by the Administrator, to be suitable for continued service use to complete the worst case intended flight profile associated with application of the 30-Second OEI rating.

(c) Each engine for which 30-Second OEI and 2-Minute OEI ratings are desired, that incorporates a temperature limiter, must be run for a period of 4 minutes at the maximum permissible power-on r.p.m. with the gas temperature at least 35 °F higher than the maximum operating limit. Following this run, the turbine assembly may exhibit distress beyond the limits for an overtemperature condition provided the engine is shown by analysis or test, as found necessary by the Administrator, to be suitable for continued service use to complete the worst case intended flight profile associated with application of the 30-Second OEI rating.

(d) A separate test vehicle may be used for each test condition.

Explanation: This proposal provides for an exception from the existing requirement for rotorcraft engines for which the 30-Second OEI rating and the 2-Minute OEI rating are sought, and introduces a second overtemperature test requirement, in paragraphs (b), (c), and (d) for those engines.

The technical rationale for this proposal is to apply the existing rule's overtemperature test conditions to engines not equipped with a temperature limiter. However, for those engines equipped with a temperature limiter, a 4-minute test at 35 °F overtemperature while at the maximum permissible r.p.m. is proposed as an adequate demonstration of temperature life margin. A corollary is that engines equipped and qualified to the 35 °F overtemperature condition will need provisions for pre-dispatch operational status checking of the temperature limiters.

Note that the "maximum permissible r.p.m." specified in the proposal refers to the highest rotor speed for power-on engine operation (non-autorotative), whether steady-state or transient, which will be specified on the engine type certificate data sheet. The explanation for the proposed acceptance criteria, following the overtemperature test based on the 30-Second OEI rating, is identical to that for the overspeed test of Proposal 5.

11. By amending § 33.93 by revising and redesignating the existing text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 33.93 Teardown inspection.

(a) After completing the endurance testing of § 33.87 (b), (c), (d), (e), or (g) of this part, each engine must be completely disassembled, and—

(1) Each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must retain each setting and functioning characteristic within the limits that were established and recorded at the beginning of the test; and

(2) Each engine part must conform to the type design and be eligible for incorporation into an engine for continued operation, in accordance with information submitted in compliance with § 33.4.

(b) After completing the endurance testing of § 33.87(f) of this part, each engine must be completely disassembled, and—

(1) Each component having an adjustment setting and a functioning characteristic that can be established independent of installation on the engine must retain each setting and functioning characteristic within the limits that were established and recorded at the beginning of the test; and

(2) Each engine may exhibit deterioration in excess of that permitted in paragraph (a)(2) of this section including some engine parts of components that may be unsuitable for further use. The applicant must show by analysis and/or test, as found necessary by the Administrator, that structural integrity of the engine including mounts, cases, bearing supports, shafts, and rotors, is maintained; or

(c) In lieu of compliance with § 33.93(b) herein, each engine for which the 30-Second OEI and 2-Minute OEI ratings are desired, may be subjected to the endurance testing of § 33.87 (b) or (c) or (d) and (e) of this part, and followed by the testing of § 33.87(f), without intervening disassembly and inspection. However, the engine must comply with § 33.93(a) herein after completing the endurance testing of § 33.87(f).

Explanation: This proposal provides a second teardown inspection requirement for rotorcraft engines for which the 30-Second OEI rating and the 2-Minute OEI rating are sought.

The existing criteria for post-endurance testing teardown and inspection of § 33.93 are retained and reidentified as paragraph (a). New paragraphs (b) and (c) both require the applicant to disassemble and inspect the engine following the endurance testing of § 33.87(f). However, if the applicant does not establish an inspection baseline prior to the § 33.87(f) testing, then the more rigorous inspection standards of paragraph (a) of this section would apply. Otherwise the inspection standards of paragraph (b) would apply. The concept of limited use ratings followed by mandatory inspection is predicated on the assumption that some engine parts may not be suitable for further use and may be discarded after these ratings have been used.

Issued in Washington, DC, on September 14, 1989.

Daniel P. Salvano,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-22239 Filed 9-21-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Register

Friday
September 22, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 27 and 29

Airworthiness Standards: New Rotorcraft 30-Second/2-Minute One-Engine-Inoperative Power Ratings; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

14 CFR Parts 27 and 29

[Docket No. 26018; Notice No. 89-26]

RIN 2120-AB90

Airworthiness Standards; New Rotorcraft 30-Second/2-Minute One-Engine-Inoperative Power Ratings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice responds to a petition for rulemaking from Aerospace Industries Association of America, Inc. (AIA), and proposes to amend the Federal Aviation Regulations to incorporate new one-engine-inoperative (OEI) power ratings for multiengine, turbine-powered rotorcraft. If adopted, these proposals would enhance rotorcraft safety after an engine failure or precautionary shutdown by providing OEI power, when required, with assurance that the drive system would maintain its structural integrity and allow continued safe flight while operating at the new OEI power ratings with the operable engine(s). See this issue of the **Federal Register** for the corresponding NPRM covering engine type certification which should be considered when reviewing these proposals.

DATES: Comments must be submitted on or before March 27, 1990.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 26018, 800 Independence Avenue SW., Washington, DC 20591. Comments delivered must be marked "Docket No. 26018." Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ray Twa, Rotorcraft Standards Staff, FAA, Fort Worth, Texas 76193-0110, telephone number (817) 624-5158.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this notice are also invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments specified will be considered by the Administrator before taking action on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments received will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26018." The postcard will be date stamped and mailed to the commenter.

Availability of This Notice

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484.Communications must identify the notice number of this NPRM.

Persons interested in being placed on the mailing list for future NPRM's should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Public Meeting

A public meeting is being scheduled to discuss the proposals in this notice, and the date and location will be announced in a forthcoming issue of the **Federal Register.**

Background

Petition From AIA

By letter dated September 20, 1984, the AIA petitioned for rulemaking requesting amendments to parts 1, 27, 29, and 33 of the FAR to establish new 30-second, 2-minute, and continuous OEI power ratings. A summary of the petition was published in the **Federal Register** on December 14, 1984 (49 FR 48759). Two comments were received which supported the petition.

For administrative reasons, the FAA is publishing two NPRM's in response to the AIA petition for rulemaking. This NPRM covers the proposed changes to parts 27 and 29 for normal and transport category rotorcraft, and a separate NPRM covers the proposed changes to parts 1 and 33 for definitions and engines. See this issue of the **Federal Register** for the corresponding NPRM covering parts 1 and 33 which should be considered when reviewing these proposals.

In the process of drafting this proposed rule change, numerous meetings were held with the industry groups and airworthiness authorities of other countries in an attempt to identify and address all of the issues. As set forth in the AIA's petition, only multiengine, turbine-powered rotorcraft would be eligible for these proposed new OEI power ratings which would be applicable to the remaining engine(s) only after an in-flight failure or precautionary shutdown of an engine. The rated 30-second OEI power would be limited to periods of not over 30 seconds at any one time and would be used to enhance the OEI performance of the rotorcraft during the transient phase of the takeoff and landing maneuvers. The rated 2-minute OEI power would be limited to periods of not over 2 minutes at any one time and would be used to achieve initial stabilized climb of at least 100 feet per minute following takeoff or balked landing flight with one engine inoperative. These ratings would be used instead of the existing 2½-minute OEI power rating or normal takeoff power.

The continuous OEI power rating and all aspects of its definition, eligibility, qualification, and performance credit were adopted in Amendments 1-34, 27-23, 29-26, and 33-12, Rotorcraft Regulatory Review Program Amendment No. 3 (53 FR 34198; September 2, 1988).

History

The power levels expected to be certificated as the rated 30-second OEI power and the rated 2-minute OEI power will approach or equal the ultimate power capabilities of the engines and may inflict some damage upon the engine during each usage. The potentially damaging aspects of this feature would be offset by the increased safety of continued takeoff, shorter takeoff distance, and increased productivity. The proposed requirement to conduct special engine certification tests under part 33 (see the separate NPRM covering parts 1 and 33) and to conduct drive system tests under parts 27 and 29 of this proposal would ensure the capability of the engines to produce safely the required power. Also, after

use of the higher power levels, the proposed mandatory inspections and associated maintenance on the engines, required to be provided by the applicant, would ensure serviceability of these engines and safety of the rotorcraft prior to further dispatch.

These proposals would set forth the performance requirements, endurance tests, equipment requirements, and limitations associated with use of these ratings in rotorcraft. The proposed drive system endurance test requirements would be limited in extent and scope based on the assumed low frequency of usage and differ in concept from the corresponding engine (part 33) test in that, for the rotorcraft, all components subject to the test must be in serviceable condition at the conclusion of the test. Proposed new equipment requirements identified by this proposal would involve design features to limit and record power parameter excursions into the OEI power range and a means to warn the flightcrew of the start and expiration of the 30-second time limit.

Training

Although outside the scope of this NPRM, the method of training flight crewmembers in the correct procedures and the use of these new OEI power ratings and equipment should be considered during the design and certification process. Since the actual use of the 30-second and 2-minute OEI power ratings will probably cause some damage to the engine, training flights utilizing these ratings could be prohibitive. Therefore, some form of simulation could be a means of conducting training without resulting in possible damage to the engine.

Discussion of the Proposals

Sections 27.923 and 29.923

These proposed changes to paragraphs (e) of § 27.923 and (a) and (b) of § 29.923 would introduce into the rotor drive system endurance test schedule the special tests deemed necessary to qualify the rotor drive system for the new 30-second/2-minute OEI power ratings. Placement of these requirements in these sections would ensure that at least one specimen of the rotor drive system of a complete, representative rotorcraft is subjected to the cumulative effects of both normal and emergency operation during qualification testing. The proposed requirements would apply the loads a sufficient number of times to demonstrate adequacy of the rotor drive system. This is considered to be proportional to the durations of other load applications of these test runs when compared with the service life of the rotor drive system.

It is not likely that engines used during the basic endurance test can withstand the length of test times at 30-second and 2-minute OEI powers without replacement at least several times during the endurance test, since these test runs exceed the proposed qualification testing on the engines. The cost of engine replacement (two to four engines or more) during the basic endurance test, as well as maintenance costs and downtime to accomplish these changes, would constitute an undue and unnecessary burden in time and cost.

In view of the above, the use of back-to-back test stands or similar bench tests to apply the 30-second and 2-minute OEI torques is appropriate and consistent with past FAA policy to accept bench testing for drive system/component substantiation for maximum torque conditions, overtorque conditions, including transients, and 15-minute loss of oil pressure.

Sections 27.1143 and 29.1143

Proposed new paragraphs (e) to § 27.1143 and (f) to § 29.1143 would add the requirement for automatic control of the 30-second power to these sections. The 30-second OEI power rating would be authorized to be used only after failure or precautionary shutdown of an engine during the critical, low altitude phase of a takeoff or landing. During this phase, crew attention should not be diverted to monitor powerplant instruments to avoid exceedances. The requirement for automatic devices would be added to protect power sensitive components of the transmission and rotor drive system from excessive loads, stresses, or other damaging conditions. Devices and systems supplied to provide compliance with this proposal may be included totally or in part in the certificated design of the engine used in the rotorcraft.

Sections 27.1305 and 29.1305

The requirement for a pilot alert would be added in proposed new paragraphs (t) and (u) to § 27.1305 and new paragraphs (a) (24) and (25) to § 29.1305 because the 30-second OEI power rating will only be used during a highly critical flight regime when the crew cannot be expected to monitor the power level demanded or the amount of time lapsed since initiation of 30-second OEI power. A device to alert the crew to the start and expiration (or impending expiration) of the 30-second interval is needed to advise the pilot that the engine is at the 30-second power level and also to minimize the probability that the crew will inadvertently allow this time limit to be exceeded. Use of the 30-second or the 2-minute OEI power level may damage the engine; therefore, mandatory maintenance and inspection limitations are contained in the proposal for §§ 27.1521 and 29.1521, and appropriate action would be required prior to any subsequent dispatch of the rotorcraft.

The requirement for a recording device would be added to ensure that maintenance personnel have valid information on the degree and extent of the use of these ratings. This recording device must be accessible only to ground maintenance personnel. This device must be expected to activate only rarely; therefore, normal reliability measures may not suffice. Accordingly, a means to check the function of the device routinely would be required. As discussed under the proposal for §§ 27.1143 and 29.1143, all or part of the device or systems supplied to comply with this proposed rule may be included in the certificated design of the engine.

Sections 27.1521 and 29.1521

The proposed 30-second and 2-minute OEI power limitation listings would be added in new paragraphs (j) and (k) to § 27.1521 and new paragraphs (i) and (j) to § 29.1521 along with rotorcraft applicability and the conditions for their use. An additional limitation is proposed which would require inspections and other action furnished in accordance with sections A27.4, A29.4, and A33.4 of the associated parts prior to further operation of the engine. These limitations would also appear in the rotorcraft flight manual as required by §§ 27.1583 and 29.1583 and are necessary, prior to further dispatch of the rotorcraft, to identify any damage which may have occurred as a result of the use of these new ratings.

Sections 27.1549 and 29.1549

The proposed 30-second OEI rating which would be revised in paragraph (e) to § 27.1549 and a revised paragraph (e) in § 29.1549 would be used only during the transient phase of takeoff and landing operations after a failure or precautionary shutdown of an engine. Crew attention to monitor this powerplant limitation is not expected during this phase; thus, normal limit markings at this rating on powerplant instruments are not needed. This requirement would complement the changes to §§ 27.1143 and 29.1143 which propose automatic control of this new power rating.

Section 29.67

The safety analysis presented by the petitioner did not include any rationale or justification for the use of 30-second OEI power to establish any specific climb performance. Accordingly, § 29.67(a)(1) would be revised to specify that only 2-minute OEI power (for rotorcraft certificated for the 30-second/2-minute OEI power) may be used to show compliance with the 100-foot-per-minute rate of climb required by this section. For this same reason, rotorcraft certificated for the 30-second/2-minute OEI ratings may not use power greater than continuous OEI power to establish the climb performance required by paragraphs (a)(2), (a)(3) and (b) of this section.

Regulatory Evaluation Summary

Introduction

The use of the new optional rating structure will provide significant benefits to operators of Category A helicopters. A Category A helicopter is one which is multiengine and which can withstand any single engine becoming inoperative and either continue flight or land within a demonstrated field size. In addition to increased payloads, the proposals would enable rotorcraft operators to operate from significantly smaller heliports with the same degree of safety because of the decrease in the minimum required rejected takeoff distances for Category A operations. The rejected takeoff distance is the distance from the start of the takeoff to the stopping point after landing back on the surface. The current regulation puts operators using shorter fields at a disadvantage because of an inability to satisfy Category A operational requirements. This increased operational flexibility should enable operators to fly Category A operations and possibly use more efficient and profitable route structures (where larger fields are not available).

Benefit/Cost Comparison

The proposals to establish OEI ratings for periods of shorter duration than are currently allowed would provide an additional optional capability to manufacturers. The testing costs associated with obtaining this rating should be viewed as the price of an additional capability and would be evaluated by the rotorcraft manufacturer based upon market potential. The principal operational benefits derived from these new optional ratings would be the ability to carry higher payloads from existing fields or to takeoff from smaller fields with current payloads. The AIA estimates that the use of the new rating structure for a given Category A mission could result in an increase in productivity of 48 percent for a 37,000 pound design gross weight (DGW) helicopter to 125 percent for a 7,500 DGW helicopter if operators who fly only Category A missions choose to take full advantage of the increase in payload that would be permitted. The AIA also notes that the public will also stand to benefit from these proposals because the availability of viable short-field performance should encourage the development to downtown heliports, thereby enhancing convenience.

For a manufacturer considering a new design, the issue of whether to design a helicopter to accommodate engines capable of satisfying the new OEI rating scheme (the use of the new ratings will affect helicopter preformance standards as well as the structural and drive system requirements) will be influenced by the following factors:

- The availability of appropriately sized engines (larger helicopters designed for Category A use only will be able to use a smaller engine).
- The OEI capability of competitive products.
- The operator mission requirements.
- The cost (for increased testing and increased engine performance) of obtaining the new OEI capability in comparison with the increase in payload of flexibility of route structures afforded by this capability.

The availability of the new OEI capability could provide substantial benefits to rotorcraft manufacturers and operators. However, such benefits would be difficult to quantify because the number of products certified to this standard cannot be estimated. In addition, the specific increases in dispatch payload cannot be estimated because it will be a function of the specific rotorcraft design in relation to what engines will be available. These optional ratings should enhance the ability of operators who are limited by current regulations to Category B operations. Because of the small size of fields operators use, they will be able to fly more Category A operations, which should improve their profitability. The extent of benefits for these operators will depend to a large degree upon the mix of Category A and B operations they choose, which cannot be predicted. The FAA has not been able to quantify these potential benefits either on a per-unit or industry-wide scale because of the radical nature of the changes in rotorcraft design and performance that these optional ratings would promote and the large number of highly variable factors that would influence the magnitude of the overall benefits. The FAA does conclude that the optional OEI ratings would have no negative impact on manufacturers or operators. Because these ratings are optional, manufacturers will provide this capability only if the additional costs can be recovered in the market place.

The FAA maintains that safety after an engine failure under the proposed regulations for limited-use ratings will be at least equivalent to operational safety under the current regulations. This condition is contingent upon the concept that these 30-second and 2-minute OEI power ratings are "limited use/mandatory inspection ratings." Following one mission cycle of rating use, specific requirements for inspection will have to be met to verify continued airworthiness of the engine. Under current regulations, there is no requirement for an inspection following an OEI power application. Any rotorcraft parts found to be unsuitable for further use will need to be replaced after application of these ratings. The FAA has ensured that a high level of safety would be maintained as a result of new test and analysis requirements.

International Trade Impact Analysis

The proposals in this notice would have little or no impact on trade for both U.S firms doing business in foreign countries and foreign firms doing business in the United States. In the United States market, foreign manufacturers would have the option of designing engines and helicopters capable of satisfying the new OEI ratings and would therefore not be at a competitive disadvantage with U.S. manufacturers. Because of the large U.S. market, foreign manufacturers are likely to certify their rotorcraft to U.S. rules, which would limit any competitive advantage U.S. manufacturers might gain in foreign markets.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (FRA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The FRA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities." The FAA's criterion for a small aircraft manufacturer is one employing less than 75 employees. A substantial number is a number which is not less than 11 and which is more than one-third of the small entities subject to the proposal rules, and a significant impact is one

having an annual cost of more than $14,900 (1987 dollars) per manufacturer. A review of domestic helicopter manufacturing companies indicates that there are less than 11 small helicopter manufacturers. The proposed amendments to parts 27 and 29 will therefore not affect a substantial number of small entities.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that these proposals would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

For the reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. In addition, the FAA certifies that this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. This proposal is considered nonsignificant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "**FOR FURTHER INFORMATION CONTACT.**"

List of Subjects in 14 CFR Parts 27 and 29

Air transportation, Aircraft, Aviation safety, Safety, Rotorcraft.

The Proposed Amendments

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 27 and 29 of the Federal Aviation Regulations (14 CFR parts 27 and 29) as follows:

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

1. The authority citation for part 27 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 27.923 is amended by revising paragraph (e) to read as follows:

§ 27.923 Rotor drive system and control mechanism tests.

* * * * *

(e) A 10-hour part of the test prescribed in paragraph (b) of this section must be run at not less than takeoff torque and the maximum speed for use with takeoff torque. The main and auxiliary rotor controls must be in the normal position for vertical ascent.

(1) For multiengine rotorcraft for which the use of 2½ minute OEI power is requested, 12 runs during the 10-hour test must be conducted as follows:

(i) Each run must consist of at least one period of 2½ minutes with takeoff torque and the maximum speed for use with takeoff torque on all engines.

(ii) Each run must consist of at least one period for each engine in sequence, during which that engine simulates a power failure and the remaining engines are run at 2½-minute OEI torque and the maximum speed for use with 2½-minute OEI torque for 2½ minutes.

(2) For multiengine, turbine-powered rotorcraft for which the use of 30-second and 2-minute OEI power is requested, 10 runs must be conducted as follows:

(i) Immediately following a takeoff run of at least 5 minutes, each power source must simulate a failure, in turn, and apply the maximum torque and the maximum speed for use with 30-second OEI power to the remaining affected drive system power inputs for not less than 30 seconds, followed by application of the maximum torque and the maximum speed for use with 2-minute OEI power for not less than 2 minutes. At least one run sequence must be conducted from a simulated "flight idle" condition.

(ii) for the purpose of this paragraph, an affected power input includes all parts of the rotor drive system which can be adversely affected by the application of higher or asymmetric torque and speed prescribed by the test.

(iii) This test may be conducted on a representative bench test facility when engine limitations either preclude repeated use of this power or would result in premature engine removal during the test. The loads, the frequency, and the methods of application to the affected rotor drive system components must be representative of rotorcraft conditions. Test components must be those used for showing compliance with the remainder of this section.

* * * * *

3. Section 27.1143 is amended by adding a new paragraph (e) to read as follows:

§ 27.1143 Engine controls.

* * * * *

(e) For rotorcraft to be certificated for a 30-second OEI power rating, a means must be provided to automatically control or otherwise prevent any engine from exceeding the installed engine limits associated with the 30-second OEI power rating approved for the rotorcraft.

4. Section 27.1305 is amended by adding new paragraphs (t) and (u) to read as follows:

§ 27.1305 Powerplant instruments.

* * * * *

(t) For rotorcraft for which a 30-second/2-minute OEI power rating is requested, a means must be provided to alert the pilot when the engine is at the 30-second and the 2-miniute OEI power levels, when the event begins, and when the time interval expires.

(u) For each turbine engine utilizing 30-second/2-minute OEI power, a device or system must be provided which—

(1) Records each usage and duration of power at the 30-second and 2-minute OEI levels;

(2) Permits retrieval of the recorded data;

(3) Can be reset only by ground maintenance personnel; and

(4) Has a means to verify proper operation of the system or device.

5. Section 27.1521 is amended by adding new paragraphs (j) and (k) to read as follows:

§ 27.1521 Powerplant limitations.

* * * * *

(j) *Rated 30-second OEI power operation.* Rated 30-second OEI power is permitted only on multiengine, turbine-powered rotorcraft, also certificated for the use of rated 2-minute OEI power, and can only be used for continued operation of the remaining engine(s) after a failure or precautionary shutdown of an engine. It must be shown that following application of 30-second OEI power, any damage will be readily detectable by the necessary inspections and other related procedures furnished in accordance with section A27.4 of appendix A of this part and section A33.4 of appendix A of part 33. The use of 30-second OEI power must be limited to not more than 30 seconds for any period in which that power is used, and by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(k) *Rated 2-minute OEI power operation.* Rated 2-minute OEI power is permitted only on multiengine, turbine-powered rotorcraft, also certificated for the use of rated 30-second OEI power, and can only be used for continued operation of the remaining engine(s) after a failure or precautionary shutdown of an engine. It must be shown that following application of 2-minute OEI power, any damage will be readily detectable by the necessary inspections and other related procedures furnished in accordance with section A27.4 of appendix A of this part and section A33.4 of appendix A of part 33. The use of 2-minute OEI power must be limited to not more than 2 minutes for any period in which that power is used, and by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

6. Section 27.1549 is amended by revising paragraph (e) to read as follows:

§ 27.1549 Powerplant instruments.

* * * * *

(e) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section except that no marking is normally required for the 30-second OEI limit.

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

7. The authority citation for part 29 continues to read as follows:

Authority: 49 U.S.C. 1344, 1354(a), 1355, 1421, 1423, 1424, 1425, 1428, 1429, and 1430; 49 U.S.C. 106(g), (Revised Pub. L. 97-449, January 12, 1983),

8. Section 29.67 is amended by revising paragraph (a)(1)(i) to read as follows:

§ 29.67 Climb: one engine inoperative.

(a) * * *

(1) * * *

(i) The critical engine inoperative and the remaining engines within approved operating limitations, except that for rotorcraft for which the use of 30-second/2-minute OEI power is requested, only the 2-minute OEI power may be used in showing compliance with this paragraph;

* * * * *

9. Section 29.923 is amended by revising paragraphs (a) (introductory text) and (b)(1); and by adding a new paragraph (b)(3) to read as follows:

§ 29.923 Rotor drive system and control mechanism tests.

(a) *Endurance tests, general.* Each rotor drive system and rotor control mechanism must be tested, as prescribed in paragraphs (b) through (n) of this section, for at least 200 hours plus the time required to meet the requirements of paragraphs (b)(2), (b)(3), and (k) of this section. These tests must be conducted as follows:

* * * * *

(b) * * *

(1) Except as prescribed in paragraphs (b)(2) and (b)(3) of this section, the takeoff torque run must consist of 1 hour of alternate runs of 5 minutes at takeoff torque and the maximum speed for use with takeoff torque; and 5 minutes at as low an engine idle speed as practicable. The engine must be declutched from the rotor drive system, and the rotor brake, if furnished and so intended, must be applied during the first minute of the idle run. During the remaining 4 minutes of the idle run, the clutch must be engaged so that the engine drives the rotors at the minimum practical r.p.m. Acceleration of the engine and the rotor drive system must be done at the maximum rate. When declutching the engine, it must be decelerated rapidly enough to allow the operation of the overrunning clutch.

* * * * *

(3) For multiengine, turbine-powered rotorcraft for which the use of 30-second/2-minute OEI power is requested, the takeoff run must be conducted as prescribed in paragraph (b)(1) of this section except for the following:

(i) Immediately following any one 5-minute power-on run required by paragraph (b)(1) of this section, each power source must simulate a failure, in turn, and apply the maximum torque and the maximum speed for use with 30-second OEI power to the remaining affected drive system power inputs for not less than 30 seconds, followed by application of the maximum torque and the maximum speed for use with 2-minute OEI power for not less than 2 minutes. At least one run sequence must be conducted from a simulated "flight idle" condition.

(ii) For the purpose of this paragraph, an affected power input includes all parts of the rotor drive system which can be adversely affected by the application of higher or asymmetric torque and speed prescribed by the test.

(iii) This test may be conducted on a representative bench test facility when engine limitations either preclude repeated use of this power or would result in premature engine removals during the test. The load, the frequency, and the methods of application to the affected rotor drive system components must be representative of rotorcraft conditions. Test components must be those used for showing compliance with the remainder of this section.

* * * * *

10. Section 29.1143 is amended by adding a new paragraph (f) to read as follows:

§ 29.1143 Engine controls.

* * * * *

(f) For rotorcraft to be certificated for a 30-second OEI power rating, a means must be provided to automatically control or otherwise prevent any engine from exceeding the installed engine limits associated with the 30-second OEI power rating approved for the rotorcraft.

11. Section 29.1305 is amended by adding new paragraphs (a)(24) and (25), to read as follows:

§ 29.1305 Powerplant instruments.

* * * * *

(a) * * *

(24) For rotorcraft for which a 30-second/2-minute OEI power rating is requested, a means must be provided to alert the pilot when the engine is at the 30-second and 2-minute OEI power levels, when the event begins, and when the time interval expires.

(25) For each turbine engine utilizing 30-second/2-minute OEI power, a device or system must be provided which—

(i) Records each usage and duration of power at the 30-second and 2-minute OEI levels;

(ii) Permits retrieval of the recorded data;

(iii) Can be reset only by ground maintenance personnel; and

(iv) Has a means to verify proper operation of the system or device.

* * * * *

12. Section 29.1521 is amended by adding new paragraphs (i) and (j) to read as follows:

§ 29.1521 Powerplant limitations.

* * * * *

(i) *Rated 30-second OEI power operation.* Rated 30-second OEI power is permitted only on multiengine, turbine-powered rotorcraft, also certificated for the use of rated 2-minute OEI power, and can only be used for continued operation of the remaining engine(s) after a failure or precautionary shutdown of an engine. It must be shown that following application of 30-second OEI power, any damage will be readily detectable by the necessary inspections and other related procedures furnished in accordance with section A29.4 of appendix A of this part and section A33.4 of appendix A of part 33. The use of 30-second OEI power must be limited to not more than 30 seconds for any period in which the power is used, and by—

(1) The maximum rotational speed which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

(j) *Rated 2-minute OEI power operation.* Rated 2-minute OEI power is permitted only on multiengine, turbine-powered rotorcraft, also certificated for the use of rated 30-second OEI power, and can only be used for continued operation of the remaining engine(s) after a failure or precautionary shutdown of an engine. It must be shown that following application of 2-minute OEI power, any damage will be readily detectable by the necessary inspections and other related procedures furnished in accordance with A29.4 of appendix A of this part and A33.4 of appendix A of part 33. The use of 2-minute OEI power must be limited to not more than 2 minutes for any period in which that power is used, and by—

(1) The maximum rotational speed, which may not be greater than—

(i) The maximum value determined by the rotor design; or

(ii) The maximum value demonstrated during the type tests;

(2) The maximum allowable gas temperature; and

(3) The maximum allowable torque.

13. Section 29.1549 is amended by revising paragraph (e) to read as follows:

§ 29.1549 Powerplant instruments.

* * * * *

(e) Each OEI limit or approved operating range must be marked to be clearly differentiated from the markings of paragraphs (a) through (d) of this section except that no marking is normally required for the 30-second OEI limit.

Issued in Washington, DC, on September 14, 1989.

Daniel P. Salvano,

Acting Director, Aircraft Certification Service.

[FR Doc. 89-22238 Filed 9-21-89; 8:45 am]

BILLING CODE 4910-13-M

federal register

Friday
September 22, 1989

Part IV

Department of Justice

Bureau of Prisons

28 CFR Parts 504 and 541

Control, Custody, Care, Treatment and Instruction of Inmates; Acceptance of Donations and Inmate Discipline and Special Housing Units; Final Rules

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 504

Control, Custody, Care, Treatment and Instruction of Inmates; Acceptance of Donations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is promulgating regulations on the acceptance of donations for use by the Bureau of Prisons or Federal Prison Industries, Inc. (UNICOR). The authority to promulgate such regulations has been delegated by the Attorney General to the Director of the Bureau of Prisons. The intended effect of this action is to ensure the efficient and economical operation of the Bureau of Prisons and Federal Prison Industries, Inc.

EFFECTIVE DATE: September 22, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is promulgating regulations on the acceptance of donations for use by the Bureau of Prisons or Federal Prison Industries, Inc. The authority to accept such donations was statutorily provided to the Attorney General in 18 U.S.C. 4044. This authority has been delegated by the Attorney General to the Director of the Bureau of Prisons in 28 CFR 0.96(t). The current rulemaking authorizes the Bureau of Prisons to accept donations that are appropriate to the program and mission of the Bureau of Prisons or Federal Prison Industries, Inc., provided such donations provide benefits in excess of the incidental costs incurred in obtaining or operating the donation and do not create a conflict of interest. Because these regulations pose no burden on the public, and are intended to provide agency management guidelines for implementing 18 U.S.C. 4044, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register.**

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this rule since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 504

Administrative practice and procedure, Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), subchapter A of 28 CFR chapter V is amended as set forth below.

Dated: September 18, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

1. In 28 CFR subchapter A, part 504 is added to read as follows:

PART 504—ACCEPTANCE OF DONATIONS

Sec.

504.1 Purpose and scope.

504.2 Procedures.

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4003, 4042, 4044, 4081; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

§ 504.1 Purpose and scope.

Pursuant to 18 U.S.C. 4044, and as delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(t), any devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries, Inc. (UNICOR), may be accepted in accordance with these rules. Pursuant to 28 CFR 0.97, the Director's authority to accept such donations is redelegated to Bureau of Prisons Assistant Directors and Regional Directors.

§ 504.2 Procedures.

(a) In accepting any devise, bequest, gift or donation, the Regional Director or Assistant Director must determine in writing that the property or money is appropriate to the program and mission of the Bureau of Prisons or Federal Prison Industries, Inc., that it does not create a conflict of interest for the Bureau of Prisons or Federal Prison Industries, Inc., and that it provides benefits to the Bureau of Prisons or Federal Prison Industries, Inc., in excess of any incidental costs incurred in obtaining or operating the donation.

(b) No devise, bequest, gift or donation will be accepted which attaches conditions inconsistent with applicable laws or regulations or which will require the expenditure of appropriated funds unless such expenditure has been authorized by Act of Congress.

(c) No devise, bequest, gift or donation will be accepted if conditions are attached without the written approval of the Director of the Bureau of Prisons.

[FR Doc. 89–22429 Filed 9–21–89; 8:45 am]

BILLING CODE 4410–05–M

28 CFR Part 541

Control, Custody, Care, Treatment and Instruction of Inmates, Inmate Discipline and Special Housing Units; Correction

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule; correction.

SUMMARY: In this document the Bureau of Prisons is making editorial corrections to part 541, Inmate Discipline and Special Housing Units. This document removes redundant text inadvertently included in an amendment to part 541, subpart B, table 3—Prohibited Acts and Disciplinary Severity Scale and corrects an authority citation to subpart E. These corrections are editorial in nature and have no effect on the substance or the intent of the rule.

EFFECTIVE DATE: July 1, 1989.

ADDRESSES: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 724–3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is making editorial corrections to part 541 on Inmate Discipline and Special Housing Units. An amendment to subpart B, published in the **Federal Register** on October 17, 1988 (53 FR 40686 *et seq.*), added Sanction B.1 to Table 3—Prohibited Acts and Disciplinary Severity Scale in each category. The display of text for the amendment in the Low Moderate Category shows not only the correct text for Sanction B.1 but also the separate addition of the line "Sanctions B.1, E–P." That line, which merely indicates the span of sanctions listed under the "Low Moderate Category," serves no practical purpose in the table, and consequently that line is being removed by this

correction. Another amendment, published in the **Federal Register** on March 17, 1989 (54 FR 11322 *et seq.*), revised subpart E—Procedures for Handling of HIV Positive Inmates Who Pose Danger to Others. The authority citation for that amendment was described as being a revision of the authority citation to the part; it should have been described as a revision of the authority citation to the subpart.

Because these corrections pose no additional restrictions and are entirely editorial in nature, the Bureau of Prisons finds good cause under 5 U.S.C. 553 to make this rule effective without a notice of proposed rulemaking, opportunity for public comment, or delay in effective date.

List of Subjects in 28 CFR Part 541

Prisoners.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 541 in subchapter C of 28 CFR, chapter V is amended as set forth below.

Dated: September 18, 1989.

J. Michael Quinlan,

Director, Bureau of Prisons.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

1. The authority citations for subparts B and E of part 541 are correctly revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 and 4161—4166 (Repealed as to conduct occurring on or after November 1, 1987), 5006—5024 (Repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95—0.99.

§ 541.13 [Amended]

2. In § 541.13 Table 3, under Low Moderate Category, the text "Sanctions B.1, E–P." which was added at 54 FR 40687 is removed.

[FR Doc. 89–22428 Filed 9–21–89; 8:45am]

BILLING CODE 4410–05–M

Federal Register

Friday
September 22, 1989

Part V

Environmental Protection Agency

40 CFR Part 131

Amendments to the Water Quality Standards Regulation That Pertain to Standards on Indian Reservations; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[WH-FRL-3553-7

RIN 2040-AB36]

Amendments to the Water Quality Standards Regulations That Pertain to Standards on Indian Reservations

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would revise the water quality standards regulation that governs the development, review, revision and approval of water quality standards under the Clean Water Act. The revisions would establish the criteria and procedures by which an Indian Tribe can qualify for treatment as a State for purposes of the Clean Water Act section 303 water quality standards and section 401 certification programs, and establish a mechanism to resolve unreasonable consequences that may arise from an Indian Tribe and a State adopting differing water quality standards on common bodies of water. This action is being taken pursuant to the requirements of section 518 of the Clean Water Act that pertain to the water quality standards and 401 certification programs.

DATES: Written comments on this proposed rule will be accepted until December 21, 1989. Because a number of similar proposed rules implementing CWA section 518 will be issued more or less concurrently, EPA notes that general comments pertaining to these proposed rules need to be submitted only once. Public hearings on this proposed rule will be held as follows:

1. November 14, 1989, Phoenix, Arizona, 1:00 p.m. and 7:00 p.m. (local time).
2. November 16, 1989, Rapid City, South Dakota, 1:00 p.m. and 7:00 p.m. (local time).
3. December 5, 1989, Washington, DC, 9:00 a.m. (local time).

Following the hearings, if time permits, EPA will brief hearing attendees on the requirements of the water quality standards program, including a general overview of the program.

ADDRESSES: The hearings will be held at the following locations:

1. Phoenix, Arizona, Hyatt Regency Phoenix, 122 N. Second St., (602) 252-1234
2. Rapid City, South Dakota, Howard Johnson's, 2211 LaCross St., (605) 343-8550
3. Washington, DC, EPA Auditorium, 401 M Street, SW., (202) 475-7315.

Comments may be addressed to: David K. Sabock, Standards Branch, Criteria and Standards Division (WH-585), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. (202) 475-7315.

FOR FURTHER INFORMATION CONTACT: David K. Sabock, Standards Branch, Criteria and Standards Division (WH-585), Office of Water Regulations and Standards, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. (202) 475-7315.

SUPPLEMENTARY INFORMATION: Information in this preamble is organized as follows:

A. Background

The February 4, 1987 Amendments to the Clean Water Act (CWA) added a new section 518, which requires EPA to promulgate regulations specifying how the Agency will treat qualified Indian Tribes as States for the purposes of Title II (Construction Grants), section 104 (Research, Investigation, and Training), section 106 (Grants for Pollution Control), section 303 (Water Quality Standards), section 305 (Water Quality Inventory), section 308 (Inspections, Monitoring, and Entry), section 309 (Federal Enforcement), section 314 (Clean Lakes), section 319 (Nonpoint Sources), section 401 (Certification), section 402 (National Pollutant Discharge Elimination System), and section 404 (Dredge and Fill Material). Section 518 also requires EPA, in promulgating these regulations, to establish a mechanism to resolve unreasonable consequences that may arise from an Indian Tribe and a State adopting differing water quality standards on common bodies of water.

This proposed regulation is in response to the CWA section 518 requirements pertaining to the section 303 water quality standards program and the section 401 certification program. Such requirements include a directive to specify how Tribes will be treated as States for purposes of the water quality standards and certification programs and a directive to establish a mechanism for resolving disputes between Tribes and States which arise over water quality standards.

Currently, section 303(c) of the Clean Water Act (33 U.S.C. 1313(c)) requires the States to develop, review, and revise water quality standards for all surface waters of the United States. EPA's implementing regulations (40 CFR part 131) require that, at a minimum, such standards include designated water uses, instream criteria to protect such uses, and an antidegradation policy. EPA's role in this process is to review and approve or disapprove the State-adopted water quality standards and, where necessary, to promulgate Federal water quality standards.

Promulgation of this regulation would supplement the standards program by establishing a procedure by which Tribes can adopt standards pursuant to the Clean Water Act. Under this regulation, water quality standards would be fashioned to meet the requirements of individual reservations, adopted by an authorized Tribal governing body, and submitted to EPA for review and approval/disapproval.

If approved, the Tribal standards would be applicable to other Clean Water Act programs, such as the National Pollutant Discharge Elimination System (NPDES) permit program. If disapproved, EPA would have a responsibility to promulgate Federal standards if the Indian Tribe did not adopt changes required by EPA's disapproval. Such an EPA promulgation would only be for those portions of the standards disapproved by EPA.

B. EPA's Indian Policy

This rule would be consistent with Federal Policy statements regarding Indian Tribes. On January 24, 1983, the Federal government established an Indian policy statement providing for treatment of Tribal governments on a government-to-government basis and supporting the principle of self-determination and local decision making by Indian Tribes. EPA subsequently adopted its own Indian policy statement and implementation guidance in November 1984.

EPA's Indian Policy is "to give special consideration to Tribal interests in making Agency policy and to ensure the

close involvement of Tribal governments in making decisions and managing the environmental programs affecting reservation lands." In practice, EPA's policy is to work directly with Tribal governments as independent authorities for reservation affairs, and not as political subdivisions of States.

C. Discussion of the Proposed Rulemaking

1. State-Tribal Dispute Resolution Mechanism

Section 518 requires EPA to establish a "* * * mechanism for the resolution of any unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and Indian Tribes located on common bodies of water." EPA's primary responsibility in response to this CWA requirement is clearly to establish a practical procedure to address and, where possible, resolve such disputes as they arise. The Agency notes, however, that its authority to resolve such disputes is limited.

EPA does not believe, for example, that section 518 grants EPA the authority to override section 510 of the Act. CWA section 510 is a "savings clause" which provides that States are not precluded from adopting requirements respecting control or abatement of pollution as long as such requirements are not less stringent than the requirements of the Clean Water Act. See *International Paper* v. *Ouellette*, 107 S.Ct. 805 (1987). Pursuant to section 510, States have adopted water quality standards more stringent than EPA may consider necessary or appropriate. EPA has taken the position that the Agency is not authorized to disapprove a State water quality standard on the basis that EPA considers the standard to be too stringent. Consistent with this position, EPA does not believe that section 518 authorizes the Agency to disapprove a State water quality standard and promulgate a less stringent standard as a means of resolving a State/Tribal dispute.

EPA believes that the provisions of section 510 would also apply to Indian Tribes that qualify for treatment as States. Nothing in CWA section 518 suggests Congress intended to pre-empt Tribes from setting more stringent standards than required by the CWA. Indeed, the provision for a dispute resolution mechanism suggests precisely the opposite. EPA believes that Tribes are not precluded by the Clean Water Act from adopting water quality standards more stringent than EPA may believe to be necessary or appropriate.

EPA invites further public comment on the Agency's interpretation of CWA section 510. Comments received on various drafts of today's proposal have been mixed. Many commenters have supported EPA's interpretation of CWA section 510 as contained in this proposed rulemaking. Other commenters, however, have argued that as a means of resolving a State-Tribal dispute which has otherwise been intractable, section 518 does provide a narrow exception to section 510 and authorizes EPA: (1) To disapprove a State or Tribal water quality standard which EPA considers more stringent than necessary or appropriate under the CWA and (2) to promulgate a less stringent or more appropriate Federal standard. One commenter suggested that EPA should disapprove overly stringent water quality standards where such standards are not scientifically defensible. EPA invites public suggestions of scientific factors with which overly-stringent water quality criteria may be identified. EPA's water quality standards regulation requires State water quality criteria to be developed based on scientifically defensible methods (see 40 CFR 131.11(b)). EPA also does not support the adoption of water quality criteria more stringent than natural background water quality. However, EPA's water quality standards regulation does not require a justification of a use designation which meets or exceeds the "fishable-swimmable" goals of the CWA (see 40 CFR 131.10(k)). Similarly, EPA generally does not require justification or other evaluation of the scientific merit of criteria which meet or exceed levels of water quality necessary to support the fishable-swimmable goal (i.e., based on comparison with CWA section 304(a) criteria recommendations).

In reviewing WQS submitted by States and Tribes, EPA will be evaluating the adequacy of the numeric criteria. Where EPA determines that such criteria are substantially more stringent than necessary to meet the "fishable-swimmable" goal of the CWA, EPA will advise the State or Tribe of this finding. EPA will use best professional judgment to make such determinations. Such determinations, however, will not necessarily be grounds for disapproval of State or Tribal WQS because, as explained above, EPA does not believe the Agency has the authority to disapprove a State or Tribal water quality standard on the basis that EPA considers the standard to be too stringent.

EPA clearly has the authority, however, to disapprove water quality standards that are less stringent than necessary to comply with the requirements of the CWA, as interpreted in EPA's regulation at 40 CFR part 131.

EPA also has the discretionary authority to object to an NPDES permit which does not comply with a downstream State's water quality standards (see CWA sections 301(b)(1)(C), 402(d)(2); 40 CFR 122.4(d), 123.44). EPA's assumption of permit issuing authority was recently upheld in a case in which EPA assumed authority to issue a permit for a North Carolina discharge that, among other factors, did not meet Tennessee's downstream water quality standards (*Champion International Corp.* v. *EPA*, 850 F.2d 182 (4th Cir. 1988).

In light of the statutory authorities in the CWA, EPA considered a number of dispute resolution techniques for inclusion in this proposed regulation. The techniques considered were: (1) Mediation, (2) non-binding arbitration, (3) voluntary binding arbitration, (4) involuntary binding arbitration, and (5) Federal promulgation. The following discussion summarizes EPA's analysis of each of these techniques.

The first technique, mediation, would allow the Regional Administrator to appoint a mediator whose primary function would be to facilitate discussions between the parties with the objective of arriving at a State-Tribal agreement or other resolution acceptable to the parties. The mediated negotiations could be informal or formal, public or private. The mediator could also establish an advisory group, consisting in part of representatives from the affected parties, to study the problem and recommend an appropriate resolution.

The second technique, non-binding arbitration, would require the Regional Administrator to appoint an arbitrator (or arbitration panel) whose responsibilities would include gathering all information pertinent to the dispute, considering the factors listed in the CWA, and recommending an appropriate solution. The parties would not be obligated, however, to abide by the arbitrator's or arbitration panel's decision. The arbitrator or arbitration panel would be responsible for issuing a written recommendation to all parties and the Regional Administrator. Arbitrators or arbitration panel members which are EPA employees would be allowed to operate independently from the normal chain of command within the Agency while conducting the arbitration process. Arbitrators or arbitration panel members would not be allowed to have

ex parte communication pertaining to the dispute, except that they would be allowed to contact EPA's Office of General Counsel for legal advice.

The third technique, voluntary binding arbitration, would be the same as the second technique with the exception that the parties would voluntarily consent, in advance, to abide by the arbitrator's or arbitration panel's decision. Because the parties would enter into a binding agreement to implement the arbitrator's recommendation, this technique has an advantage over non-binding arbitration, because it would increase the probability of resolving a dispute.

Under the fourth technique, involuntary binding arbitration, the parties would be required to enter into an agreement to abide by the arbitrator's decision. EPA does not believe, however, that the Agency has the authority, under CWA sections 518 and 303, to compel a Tribe or a State to submit to binding arbitration of a water quality standards dispute.

The fifth technique would involve EPA promulgation of Federal water quality standards for the disputed waters. Although this technique is not a dispute resolution "process' in the way the other four techniques are, it was considered for inclusion in the dispute resolution mechanism. As stated previously, Federal promulgations are authorized by the CWA where the State or Tribe adopts water quality standards that are not compliant with the requirements of the CWA. EPA does not believe that the Agency has the authority to promulgate Federal standards which are less stringent than those adopted by a State or Tribe and approved by EPA as a means of resolving a State/Tribal dispute.

EPA clearly possesses adequate authority to implement the first two of the above techniques, mediation and non-binding arbitration. These two techniques are therefore included in the proposed regulation to be used at the discretion of the Regional Administrator. The proposed regulation emphasizes use of mediation because it is consistent with CWA section 518(d), which encourages the establishment of State-Tribal cooperative agreements. The third technique, voluntary binding arbitration, is mentioned briefly in the proposed regulation as an option where parties consent. EPA has also provided for a dispute resolution default procedure to be used where one or more parties refuse to participate in mediation or arbitration. This dispute resolution technique would be very similar to arbitration, but has been included as a separate Regional Administrator option because arbitration generally refers to a process whereby all parties participate. It is EPA's judgment that involuntary binding arbitration, although desirable in certain ways, is not authorized by the CWA and for that reason it has not been included in the proposed dispute resolution mechanism. The fifth technique, federal promulgation, is also not included in the proposed regulation because that authority is already described elsewhere in 40 CFR part 131.

The Agency envisions a number of possible actions or "outcomes" that, individually or in combination, would likely resolve most of the disputes that will arise. These actions might include, but are not limited to, the following: (1) A State or Tribe agrees to revise the limits of a permit to ensure that downstream water quality standards are met, (2) a State or Tribe agrees to permanently downgrade a water quality standard, pursuant to the provisions of 40 CFR part 131, to eliminate the unreasonable consequences which have resulted, (3) a State or Tribe issues a temporary variance from water quality standards for a particular discharge, (4) a permittee or landowner agrees to provide additional water pollution controls to eliminate the unreasonable consequences, (5) EPA assumes permit issuing authority for a State or Tribe and re-issues a permit to ensure that downstream water quality standards are met, or (6) EPA promulgates Federal water quality standards where a State or Tribal standard does not meet the requirements of the Clean Water Act.

The proposed regulation establishes the conditions under which the Regional Administrator would be responsible for initiating a dispute resolution action. Such actions would be initiated where, in the judgment of the Regional Administrator: (1) There are unreasonable consequences, (2) the dispute is between a State and a Tribe (i.e., is not between a Tribe and another Tribe or a State and another State), (3) a reasonable effort has been made to resolve the dispute prior to requesting EPA involvement, (4) the requested relief is within the authority of the CWA (e.g., is not a request to replace State/Tribal standards which comply with the Clean Water Act with less stringent Federal standards), (5) the differing standards have been adopted pursuant to State/Tribal law and approved by EPA, and (6) a valid written request for EPA involvement has been submitted to the Regional Administrator by the State or Tribe. Although the Regional Administrator may decline to initiate a dispute resolution action based on any of the above factors, EPA will always be willing to hold preliminary discussions on the situation. EPA will also be willing to informally mediate disputes between Tribes consistent with the procedures previously established for mediating disputes between States (see 48 FR 51412).

The proposed regulation lists the requirements for written requests for EPA involvement. Such requirements would include: (1) A statement describing the unreasonable consequences, (2) a description of the actions which have been taken to resolve the dispute prior to requesting EPA involvement, (3) a statement describing the water quality standards provision (i.e., a particular criterion or other requirement) which has resulted in unreasonable consequences, (4) factual data which substantiate the claim of unreasonable consequences, and (5) a statement of the relief sought (i.e., the desired outcome of a dispute resolution action).

The proposal defines the "parties" to a dispute as the State and Tribe, although the Regional Administrator may include other groups or individuals as parties where appropriate. In some cases the inclusion of permittees or landowners subject to a non-point source restriction should be allowed and, in fact, may be needed in order to arrive at a meaningful resolution of the dispute.

EPA has not proposed a definition of "unreasonable consequences" because the occurrence of such consequences is dependent on the unique circumstances associated with the dispute. For example, what might be viewed as an unreasonable consequence on a stream segment in a large, relatively unpopulated, water poor area with a single discharge would likely be viewed quite differently in or near an area characterized by numerous discharges and/or large water resources.

The proposed regulation establishes that mediators and arbitrators will be EPA employees, employees of other Federal agencies, or other individuals with appropriate qualifications. Because of resource constraints, EPA anticipates that mediators and arbitrators will generally be EPA employees rather than consultants. Employees from other Federal agencies would be selected where appropriate subject to their availability. EPA intends for mediators and aribtrators to conduct the dispute resolution process in a fair and impartial manner, and will select individuals who have not been involved with the particular dispute. Members of arbitration panels will be selected by the Regional Administrator in consultation with parties. EPA

anticipates that in some cases it will be appropriate to have such panels consist of one representative from each party to the dispute plus one neutral panel member.

Where one of the parties to a dispute believes that an arbitrator has recommended an action to resolve the dispute which is not authorized by the CWA, the proposal allows the party to appeal the arbitrator's decision to the Regional Administrator. Such requests would be required to be in writing and to include a statement of the statutory basis for altering the arbitrator's recommendation.

The proposed regulation does not include a fixed time-frame for resolving disputes, primarily because EPA does not believe that setting such a time limit would be appropriate. Each dispute will be different, and EPA believes it is impossible to set a meaningful time limit for resolution of all disputes. EPA intends to provide each step in the process a reasonable amount of time.

With regard to the Federal trust responsibility to Indian Tribes, EPA believes that the scope of the Agency's "responsibility," however characterized, is defined by the Clean Water Act. Where resolution of disputes under CWA section 518 is called for, EPA believes that the Agency's responsibility is clearly to attempt to resolve such disputes consistent with the provisions of the Clean Water Act. EPA intends to act primarily as a neutral facilitator of discussions and to encourage establishment of State-Tribal cooperative agreements which resolve disputes.

2. Treatment of Indian Tribes As States

Consistent with the statutory requirement in section 518 of the CWA, this rule would also establish the procedures by which an Indian Tribe may qualify for treatment as a State for purposes of the water quality standards and CWA section 401 certification programs. For the standards program, such procedures would be established in a new § 131.8 of the water quality standards regulation. Section 131.8 would include the criteria Tribes would be required to meet to be treated as States, list the information the Tribe would be required to provide in its application to EPA, and describe the procedure EPA would use to process the Tribal applications. Proposed § 131.8 is intended to ensure that Tribes treated as States for the purposes of water quality standards are qualified, consistent with Clean Water Act requirements, to conduct a standards program that is protective of public health and the environment. The procedures are not intended to act as a barrier to Tribal program assumption. For the 401 certification program, § 131.4(c) would establish that where EPA determines that a Tribe is qualified to be treated as a State for purposes of the water quality standards program, that Tribe would, without further effort or submission of information, also qualify to be treated as a State for purposes of the section 401 certification program.

The criteria Tribes would be required to meet in order to be treated as States for purposes of water quality standards are provided in CWA section 518, which stipulates that the Tribe must: (1) Be federally recognized; (2) carry out substantial governmental duties and powers over a Federal Indian reservation; (3) have appropriate authority to regulate the quality of reservation waters; and (4) be reasonably expected to be capable of administering the standards program. These criteria are included in proposed § 131.8(a) and are discussed below.

The first criterion for treatment as a State would require the Tribe to be recognized by the Department of the Interior. The Tribe may address this requirement either by stating that they are included on the list of federally recognized Tribes published periodically by the Department of the Interior, or by submitting other appropriate documentation (e.g., if the Tribe is federally recognized but not yet included on the Department of the Interior list).

The second criterion would require the Tribe to have a governing body which is "carrying out substantial governmental duties and powers." The Agency defines "substantial governmental duties and powers" to mean that the Tribe is currently performing governmental functions to promote the health, safety, and welfare of the affected population within a defined geographical area. Examples of such functions include, but are not limited to, the power to tax, the power of eminent domain, and police power. Federal recognition by the Department of the Interior would not, in and of itself, satisfy this criterion. The Agency believes that, based on comments received on similar proposed regulations under the Safe Drinking Water Act (SDWA) and discussions with the Tribes, most Tribes should be able to meet this criterion without much difficulty (see 53 FR 37399).

To address the second criterion, the Tribe would be required to submit a narrative statement: (1) Describing the form of Tribal government; (2) describing the types of essential governmental functions currently performed, such as those listed above; and (3) identifying the sources of authorities to perform these functions (e.g., Tribal constitutions, codes, etc.).

The third criterion, concerning Tribal authority, means that EPA may treat an Indian Tribe as a State for purposes of water quality standards only where the Tribe already possesses and can adequately demonstrate authority to manage and protect water resources within the borders of the reservation. The Clean Water Act authorizes use of existing Tribal regulatory authority for managing EPA programs, but it does not grant additional authority to Tribes.

In comments received on the SDWA Indian regulations (53 FR 37396), Tribes stated that they should not face the burden of proving their authority to regulate water quality, i.e., they should receive the same recognition of sovereign authority that EPA accords States. The Agency recognizes that, in general, Tribes possess the authority to regulate activities affecting water quality on the reservation. The Agency does not believe, however, that it would be appropriate to recognize Tribal authority and approve treatment as a State requests in the absence of verifying documentation. Just as when EPA considers a State application under other CWA programs, EPA would not delegate WQS program responsibility to a Tribe unless the Tribe were to adequately show that it possesses the requisite authority.

To verify authority, the Tribe would be required to include a statement signed by the Tribal legal counsel, or an equivalent official, explaining the legal basis for the Tribe's regulatory authority, and appropriate additional documentation (e.g., maps, tribal codes and ordinances).

It should be noted that this criterion does not concern water quantity rights. Section 518 clearly indicates that all of the section 518 provisions shall be carried out in accordance with the provisions of section 101(g), which asserts that nothing in the Clean Water Act "* * * shall be construed to supersede or abrogate rights to quantities of water which have been established by any State."

The fourth criterion would require that the Tribe, in the Regional Administrator's judgment, be reasonably expected to be capable of administering an effective standards program. The Agency recognizes that certain Tribes have not had substantial experience in administering surface water quality programs. For this reason the Agency would require Tribes either: (1) To show that they have the

necessary management and technical skills, or (2) to submit a plan detailing steps for acquiring the necessary management and technical skills. When considering Tribal capability, the Agency would also consider whether the Tribe can demonstrate the existence of institutions that exercise executive, legislative, and judicial functions, and whether the Tribe has a history of successful managerial performance of public health or environmental programs.

EPA specifically invites public comment on the proposed demonstration of capability requirement for Tribes (see § 131.8(b)(4)(v). Other options which EPA is considering with respect to the capability demonstration are: (1) Exclude the provision to submit a plan detailing steps for acquiring the necessary management and technical skills, (2) include a provision which would allow EPA to withdraw a treatment as a State determination where the Tribe fails to demonstrate adequate capability (e.g., by failing to submit water quality standards for EPA review and approval within 3 years from the date of qualifying for treatment as a State), and (3) include a provision for Tribes to submit draft water quality standards as part of the demonstration of capability.

It has been suggested that any of these three options might place an additional burden on the Tribes or prejudice their ability to receive section 106 program grants. In commenting on these options, it should be noted that qualifying for treatment as a State for purposes of administering the standards program has no bearing upon the ability of the Tribe to receive Section 106 program grants to develop water quality standards nor upon EPA's providing technical assistance to the Tribes. Whether a Tribe develops standards before recognition or after has no bearing on the processes, procedures, time, or cost associated with developing water quality standards. The only difference is in the matter of timing, i.e., before or after recognition as a State. EPA notes that any action to withdraw recognition and possibly promulgate Federal standards is the antithesis of the Agency's policy to work with Indian tribes as sovereign governments.

The specific information required for Tribal applications to EPA is described in proposed § 131.8(b). The application would be required, in general, to include a statement on Tribal recognition by the Department of the Interior, documentation that the Tribal governing body has substantial duties and powers, documentation of Tribal authority to regulate water quality on the reservation, a narrative statement of Tribal capability to administer a water quality standards program, and any other information requested by the Regional Administrator.

If the Tribe has qualified for treatment as a State under other CWA or SDWA programs, then the Tribe need only provide the information which has not been submitted previously. Other CWA and SDWA Tribal programs which have been established to date include the CWA water quality management grant program (40 CFR parts 35 and 130), the SDWA underground injection control program (40 CFR part 145), and the SDWA public water system program (40 CFR part 142). Information submission requirements common to all CWA and SDWA Tribal programs are included in §§ 131.8(b)(1), 131.8(b)(2), and parts of §§ 131.8(b)(3) and 131.8(b)(4). Requirements which may be unique to the water quality standards program are described in §§ 131.8(b)(3)(i), 131.8(b)(3)(iv), 131.8(b)(4)(v), and 131.8(b)(4)(vi).

The proposed EPA review procedure, included in § 131.8(c), specifies that following receipt of Tribal applications the Regional Administrator would process such applications in a timely manner. The procedure calls for prompt notification to the Tribe that the application has been received, notification within thirty days to appropriate governmental entities (e.g., neighboring Tribes and States) of the application and the substance of and basis for the Tribe's assertion of authority over reservation waters, and an allowance of 30 days for review of the Tribe's assertion of authority.

Where a Tribe's assertion of authority is challenged, the Regional Administrator, in consultation with the Tribe, the governmental entity challenging the Tribe's assertion of authority, and the Secretary of the Interior would determine whether the Tribe has adequately demonstrated authority to regulate water quality on the reservation. Where the Regional Administrator concludes that a Tribe has not adequately demonstrated its authority with respect to an area in dispute, then Tribal assumption of the standards program would be restricted accordingly. If the authority in dispute were focused on a limited area, this would not necessarily delay the Agency's decision to treat the Tribe as a State for the non-disputed areas.

This procedure does not imply that States or Federal Agencies (other than EPA) have veto power over Tribal applications for treatment as a State. Rather, the procedure is simply intended to ensure that the Tribe has the necessary authority to administer the standards program. The Agency will not rely solely on the assertions of a commenter who challenges the Tribe's assertion of authority; EPA will make an independent evaluation of the Tribal showing.

EPA has not specified a time frame for review of Tribal applications. The Agency believes it is impossible to approve or disapprove all applications within a designated time frame. The Agency anticipates that it may be necessary to request additional information when examining Tribal applications. Similarly, the Agency's experience with States applying for various EPA programs indicates that at times meetings and discussions between EPA and the State are necessary before all requirements are met. The Agency believes that the same communication with Tribes will be important to ensure expeditious processing of Tribal applications.

Where the Regional Administrator determines that the Tribal application satisfies all of the requirements of proposed § 131.8(b), the Regional Administrator would promptly notify the Tribe that the Tribe has qualified to be treated as a State for purposes of the water quality standards program.

A decision by the Regional Administrator that a Tribe does not meet the requirements for treatment as a State for purposes of water quality standards does not preclude the Tribe from resubmitting the application at a future date. If the Regional Administrator determines that a Tribal application is deficient or incomplete, EPA will specify the changes which are necessary.

3. Establishing Water Quality Standards on Indian Lands

Where Tribes qualify to be treated as States for purposes of water quality standards, EPA would have a responsibility to assist the Tribe in establishing standards that are appropriate for the reservation and consistent with the requirements of the Clean Water Act. EPA recognizes that Tribes have limited resources for development of water quality standards. Although not included in the proposed rule, EPA considers several options as acceptable to complete the task of establishing water quality standards on Indian lands.

These options for establishing Tribal water quality standards include: (1) Negotiation of cooperative agreements with an adjoining State to apply the

State's standards to the Indian lands; (2) incorporation of the standards from an adjacent State as the Tribe's own, with or without revision; or (3) independent Tribal development and adoption of water quality standards that may account for unique site-specific conditions and waterbody uses.

The first two options would be the quickest and least costly ways of establishing Tribal water quality standards. Under option 1, requirements such as monitoring, permitting, certifications, and enforcement of water quality standards on the reservation could all be part of the negotiated agreement. Option 2 would make full use of information and data developed by the State which may apply to the reservation. Options 1 and 2 would afford Tribes the opportunity to gain experience in developing and implementing water quality standards. Once a Tribe has had this opportunity, the Tribe could then modify these standards to meet changing needs.

Option 3 would require more time and resources to implement because it would require the Tribe to create an entire set of water quality standards "from scratch." EPA does not intend to discourage this approach, but notes that Indian Tribes may want to make full use, where appropriate, of the programs of adjacent States.

EPA emphasizes that the development of Tribal WQS can be an iterative process and that the WQS development option initially selected by the Tribe can change in subsequent triennial reviews. The three options described above represent a range of resource commitments, with option 1 being the least resource intensive and option 3 the most intensive. To get a WQS program "off the ground," a Tribe may feel compelled to choose option 1 or 2. This initial decision does not preclude the Tribe from developing their own standards for subsequent triennial review cycles. Tribal standards may evolve from essentially a codification of existing State standards to a rule entirely of Tribal origin.

EPA notes that once designated uses are adopted for a waterbody, removing the use of adopting a sub-category of the use would be subject to the requirements of 40 CFR 131.10. Therefore, Tribes which are establishing water quality standards for the first time should carefully consider which waterbody uses are appropriate, because removing such uses, while not impossible, requires a demonstration that attaining the use is not feasible.

In addition to information available from EPA and adjacent States, other sources of technical assistance may be available from river basin commissions, special interstate or regional organizations, and international organizations. Although the Clean Water Act recognizes only water quality standards adopted by States, EPA, and, when this proposed regulation is promulgated, Indian Tribes which EPA determines qualify for treatment as States, such organizations often play a key role in identifying the need for certain water quality standards, developing the requisite background information to support adoption of the standards, and developing or recommending implementation actions. EPA would encourage Tribes to seek out the expertise of these organizations and for these organizations to make Tribes aware of the assistance and information that is available. In reviewing standards adopted by Indian Tribes qualifying as States (for purposes of standards), EPA would consider, just as it would for standards adopted by States, any areawide or region-wide recommendations and plans that exist to improve water quality, especially those to which EPA is a party.

Any of the three options described above, or some combination, would be acceptable to and encouraged by EPA. Actions taken under any of the three options would be subject to EPA review and approval. However, if EPA determines that the Tribe possesses authority to regulate water quality on the reservation and the Tribe declines to seek treatment as a State for purposes of water quality standards, EPA would have a responsibility under CWA section 303 to promulgate Federal water quality standards in order to meet the CWA directive to establish water quality standards for all surface waters. Depending on the circumstances, the standards of an adjacent State would be a likely starting point for such a promulgation. Promulgations will be prioritized based on varying case-by-case factors. EPA notes that Federal promulgation is a slow and deliberate process because of resource constraints and the complexity of Federal rulemaking procedures. Where permits come up for renewal, EPA may promulgate water quality standards in conjunction with re-issuing the permit.

EPA recently completed promulgation of Federal water quality standards for the Colville Confederated Tribes reservation located in the State of Washington (see 54 FR 28622, July 6, 1989). EPA notes that this promulgation does not establish a precedent for future EPA promulgations. The promulgation for the Colville reservation is unique because: (1) It was initiated before the 1987 amendments to the Clean Water Act were enacted, and (2) it is based on water quality standards previously developed by the Colville Confederated Tribes for application to waters on their reservation. The Colville promulgation is not intended as a model for other reservations. Where other Indian Tribes wish to establish standards under the CWA, EPA would expect such Tribes to await final promulgation of today's proposal and apply to be treated as States for purposes of water quality standards.

EPA emphasizes that Federal promulgation is not consistent with the intent of CWA sections 303(c) and 518(e) to provide States, and Tribes qualifying for treatment as States, with the first opportunity to set standards. In response to this intent, EPA's preference over the years has been to work cooperatively with States on water quality standards issues and to initiate Federal promulgation actions only where absolutely necessary. The Colville promulgation represents only the ninth Federal promulgation of water quality standards to be completed by EPA. Six of the nine completed promulgations have been withdrawn. EPA again notes that Federal promulgation of water quality standards is a very deliberate process. In the case of the Colville promulgation, it took EPA more than three years (from the date of the request by the Tribes) to promulgate final water quality standards.

EPA expects that, where Tribes qualify to be treated as States for purposes of water quality standards, water quality standards would be adopted and submitted for review to EPA within 180 days. This is exactly the time which was provided to States under provisions of the 1972 Federal Water Pollution Control Act Amendments, when the Federal water quality standards program was expanded to include intrastate waters (see section 303(a)(3) of the CWA). When the 1972 Act was adopted, however, most States already had interstate water quality standards in place. By contrast, many Tribes have not yet developed standards for reservation waters. As a result, EPA intends to allow Regional Administrators to grant extensions to this time limit where the Tribe can provide a reasonable rationale in writing to the Regional Administrator.

Once EPA determines that a Tribe qualifies for the standards program, Tribal development, review, and adoption of water quality standards would be subject to the same requirements that States are subject to under the Clean Water Act and EPA's

implementing regulations. These include, but are not limited to, requirements for the Tribe to: (1) Hold public hearings for the purpose of reviewing water quality standards at least once every three years, (2) designate appropriate and attainable uses for all waterbodies such that downstream uses are protected, (3) conduct use attainability analyses, where appropriate, (4) adopt appropriate numeric or narrative criteria to support each designated use, and (5) include an antidegradation policy and implementation method.

Until Tribes qualify for the standards program and adopt water quality standards under the Clean Water Act, EPA will, when possible, assume that existing water quality standards remain applicable. EPA's position on this issue is expressed in a September 9, 1988 letter from EPA's then General Counsel, Lawrence Jensen, to Dave Frohnmayer, Attorney General for the State of Oregon, a copy of which is available in the docket for today's rule. This letter indicates that "if States have established standards that purport to apply to Indian reservations, EPA will assume without deciding that those standards remain applicable until a Tribe is authorized to establish its own standards or until EPA otherwise determines in consultation with a State and Tribe that the State lacks jurisdiction * * *."

Where a State asserts authority to establish future water quality standards for a reservation, EPA policy is to ensure that the affected Tribe is made aware of that assertion, so that any issues the Tribe may wish to raise can be reviewed as part of the normal standards setting process. EPA will also encourage State-Tribal communication on standards issues, with one possible outcome being the establishment of short-term cooperative working agreements pertaining to standards and NPDES permits on reservations.

D. Summary of Proposed Changes to 40 CFR Part 131

1. The first change would be to the definitions contained in § 131.3. A change is proposed to the term States to include, in addition to the fifty States and seven Territories, Indian Tribes which EPA determines qualify for treatment as States. Also added to this section would be definitions of Federal Indian Reservation, Indian Reservation, or Reservation, and Indian Tribe or Tribe taken directly from section 518(h) of the Act.

2. Existing § 131.4 is proposed to be re-numbered § 131.4(a) and changed to replace the phrase "Under section 510 of this Act, States may develop * * *" with "At their discretion, States may develop * * *" An additional change to this paragraph would be to clarify that the definition of the word "States" is the one listed in the Definitions section. These changes are proposed to clarify that both States and Tribes qualifying for treatment as States have the right to establish water quality standards more stringent than those required by the CWA. Indian Tribes have an inherent right as sovereign governments to adopt water quality standards within their territorial jurisdictions, but such standards are cognizable under the CWA only where EPA has determined that the Tribe qualifies for treatment as a State under CWA section 518.

3. Proposed § 131.4(b) establishes that States (as defined in § 131.3) have responsibility for issuing certifications under section 401 of the Clean Water Act.

4. Proposed § 131.4(c) establishes that where Tribes qualify to be treated as States for purposes of water quality standards, they would also qualify for treatment as States for purposes of CWA section 401 certifications.

5. Existing § 131.5 is proposed to be re-numbered as § 131.5(a) and new § 131.5(b) is proposed to be added to establish that EPA has authority for issuing certifications under CWA section 401 where a State or interstate agency lacks such authority.

6. A new § 131.7 is proposed to incorporate a dispute resolution mechanism. Paragraph (a) would establish that resolution of such disputes would be the responsibility of the lead Regional Administrator. In those cases where Indian reservations cross EPA Regional lines, the lead Regional Administrator would be assigned as directed in OMB Circular A-105.

7. Proposed § 131.7(b) discusses the conditions under which the Regional Administrator would initiate the dispute resolution mechanism. Most important of these would be that, in the judgment of the Regional Administrator, the difference in water quality standards results in unreasonable consequences in another jurisdiction, either State or Indian reservation. The other necessary conditions for initiation of the dispute resolution process would be that: (1) The dispute is between a State and an Indian Tribe, (2) the parties have attempted to resolve the dispute prior to EPA involvement, (3) the requested relief is consistent with the Clean Water Act, (4) the State and Tribal standards are legally adopted and approved by EPA, and (5) a valid written request for EPA intervention has been submitted by either the Tribe or State.

8. Proposed § 131.7(c) details the required contents of a written request for resolution of a dispute to be filed by either a State or a Tribe.

9. Proposed § 131.7(d) establishes that EPA would initiate a dispute resolution action only where, in the Regional Administrator's judgment, such EPA involvement is appropriate based on the factors listed in proposed § 131.7(b). Where EPA involvement is appropriate, the Regional Administrator would promptly notify the parties in writing and solicit their written response. The Regional Administrator would also make reasonable efforts to notify other interested individuals or groups that an EPA dispute resolution action is underway.

10. Proposed § 131.7(e) stipulates that if, in accordance with applicable State and Tribal law, an Indian Tribe and State have entered into an agreement that resolves a dispute or establishes a mechanism for resolving a dispute, EPA shall defer to this agreement where it is consistent with the Clean Water Act and where it has been approved by EPA.

11. Proposed § 131.7(f) describes the three options which would be available to the Regional Administrator for resolving State/Tribal disputes. The mechanism is broadly worded so that the EPA Regional Administrator would have enough flexibility to account for varying legal, economic, scientific, environmental and other factors associated with such disputes. Mediators appointed by the Regional Administrator would be responsible for simply facilitating discussions between the State and Tribe with the objective of arriving at a State/Tribal cooperative agreement. Arbitrators appointed by the Regional Administrator or arbitration panels appointed by the Regional Administrator in consultation with parties would be responsible for examining all pertinent information and issuing a written recommendation. Parties would not be responsible for abiding by the recommendation except where they voluntarily entered into a binding agreement to do so. Where one or more parties refuse to participate in mediation or arbitration, the Regional Administrator would have the option of proceeding with an arbitration-like default procedure that would result in issuance of a written recommendation for resolving the dispute. If formal public hearings are held in connection with dispute resolution actions, Agency requirements at 40 CFR 25.5 would be followed.

12. Proposed § 131.7(g) defines several terms used within proposed § 131.7, namely, Dispute resolution mechanism and Parties.

13. A new § 131.8 is proposed which describes the requirements for treating Indian Tribes as States for purposes of the water quality standards program. EPA is including similar requirements in each of the regulations being developed in response to CWA section 518. Proposed § 131.8(a) states that the Regional Administrator is authorized to treat an Indian Tribe as a State where the Tribe meets four criteria. The four criteria are a direct reflection of the language of CWA section 518.

14. Proposed § 131.8(b) describes the minimum required contents of Tribal applications. Where the Tribe has previously qualified for CWA or SDWA programs, the Tribe would not be required to provide information which has already been submitted to EPA.

15. Proposed § 131.8(c) addresses EPA's procedures for processing a Tribal application for treatment as a State.

16. Proposed § 131.8(d) addresses EPA's procedures for withdrawing a treatment as a State for purposes of water quality standards determination.

E. Consultation With Tribes and States

This proposed rulemaking was developed with the assistance of an informal workgroup composed of representatives of Indian Tribes, States, and EPA. Three drafts of this proposal were distributed to the workgroup for comment in November of 1987, January of 1988, and September of 1988. In addition, the January and September drafts were distributed to all States, all Tribes (based on available Tribal mailing list), and several intertribal organizations for comment. A consultation meeting with States and Tribes was held in Denver, Colorado in June of 1988 for purposes of obtaining additional comments. EPA believes that these actions are an appropriate and satisfactory response to the CWA section 518 requirement to consult with Tribes and States. Public hearings will be held on this proposed rulemaking for the purpose of soliciting further public input.

F. Alaska Native Villages and Oklahoma Tribes

EPA has concluded that Alaska Native Villages (except for the Annette Island Reserve of the Metlakatla Indian Community) are not eligible to apply for treatment as States based on the definitions of "Federal Indian Reservation" and "Indian Tribe" provided in section 518 of the Clean Water Act. The CWA uses the following definitions in section 518(h):

(1) "Federal Indian Reservation" means all lands within the limits of any reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation; and

(2) "Indian Tribe" means any Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

The Agency's conclusion is based on the fact that since passage of the Alaska Native Claims Settlement Act (25 U.S.C. 1618) in 1971, Alaska Native Villages, with one exception noted above, do not exercise governmental authority over Federal Indian reservations. Due to this lack of authority, Alaska Native Villages are not "Tribes" as defined by CWA section 518. This prevents Alaska Native Villages from being eligible to assume the water quality standards program under section 518 of the Act.

Section 518(g) of the CWA does not affect EPA's analysis of the status of Alaska Native Villages. Section 518(g) states that:

* * * no provisions of this Act shall be construed to—(1) grant, enlarge, or diminish, or in any way affect the scope of the governmental authority, if any, of any Alaska Native organization, including any federally recognized Tribe, traditional Alaska Native council, or Native Council organized pursuant to the Act of June 18, 1934 (48 Stat. 987), over lands or persons in Alaska; (2) create or validate any assertion by such organization or any form of governmental authority over lands or persons in Alaska; or (3) in any way affect any assertion that Indian country as defined in section 1151 of title 18, United States Code, exists or does not exist in Alaska.

Section 518(g) merely clarifies that providing for Tribal participation under the CWA, in and of itself, does not change the legal status of the Alaska Native Villages.

The Agency also has concluded that certain Tribes on former reservations in Oklahoma and elsewhere, because they also do not meet the definition of "Tribe" in CWA section 518, likewise are not eligible to apply for the water quality standards program.

G. Regulatory Impact Analysis

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. A major rule is defined as a regulation which is likely to result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers; individual industries; Federal, State, and local government agencies; or geographic regions; or

(3) Significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because the proposed rule does not meet the definition of a major regulation, the Agency is not conducting a regulatory impact analysis. This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA and any EPA response to those comments are available for public inspection from the person listed at the beginning of this notice.

H. Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. section 601 *et seq.*, EPA must prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities. The RFA recognizes three kinds of small entities and defines them as follows:

- Small governmental jurisdiction—any government of a district with a population of less than 50,000.
- Small business—any business which is independently owned and operated and not dominant in its field as defined by Small Business Administration regulations under section 3 of the Small Business Act.
- Small organization—any not-for-profit enterprise that is independently owned and operated and not dominant in its field (e.g., private hospitals and educational institutions).

Using the above definition of small entity, EPA has concluded that the proposed regulation, if promulgated, will not have a significant impact on a substantial number of small entities; and that a Regulatory Flexibility Analysis is unnecessary. EPA has reached this conclusion based on the following considerations:

- The proposed regulation will not have a significant impact on a substantial number of small governmental organizations. Approximately 275 Tribes are potentially eligible for treatment as States under the standards program. EPA believes that, if this regulation is promulgated, roughly 50 to 60 Tribes will ultimately apply to be treated as States for purposes of water quality standards, with only about 20 of those applying during the first year. The greatest deterrent is the fact that the new CWA

provisions do not appear to provide significant monetary incentives for Tribes to assume the standards program. While most Indian Tribes would meet the definition of small governmental organization provided above, EPA believes the number of Tribes subject to significant impacts as a result of the proposed regulation being promulgated will be a very small fraction of the total that apply. This is primarily because assumption of the water quality standards program is voluntary on the part of Tribes. EPA assumes that a Tribe will not voluntarily apply to be treated as a State for purposes of water quality standards if doing so will result in significant adverse impacts on the Tribe. Moreover, the proposed regulation recognizes that Tribes have limited resources for development of original water quality standards and outlines several cost-effective options for Tribal establishment of appropriate water quality standards on Indian reservations by use of existing State water quality standards.

- The proposed regulation will not have a significant impact on a substantial number of small businesses. Although it is conceivable that an Indian Tribe which qualifies for treatment as a State could adopt water quality standards that might impose additional treatment requirements on dischargers with NPDES permits, EPA believes that these situations will be rare. In general, the number of small businesses which might be required to provide additional treatment as a result of Tribal adoption of water quality standards will likely be a minute fraction of the total number of small businesses on, or upstream from, Indian reservations. Moreover, EPA has no evidence to support a conclusion that water quality standards adopted by Tribes will, in general, cause more restrictive NPDES permit limits than contained in existing permits. Finally, the existing water quality standards regulation (40 CFR Part 131) permits States, and would permit Tribes qualifying for treatment as States, to adopt procedures specifying how individual dischargers can justify variances from water quality standards based on factors such as the existence of widespread economic and social impacts.
- The proposed regulation will not have a significant impact on a substantial number of small organizations for the same reasons that the proposed regulation will not have a significant impact on a substantial number of small businesses.

I. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 988) and a copy may be obtained from David Ogden; Information Policy Branch; EPA; 401 M St., SW. (PM-223); Washington, DC 20460 or by calling (202) 475-9498.

The public reporting burden for this collection of information is estimated to average forty-three hours per response, including reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Regulatory Affairs; OMB; 725 17th St., NW.; Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements.

List of Subjects in 40 CFR Part 131

Indian reservation water quality standards, Water pollution control, Water quality standards.

Dated: September 12, 1989.

William K. Reilly,

Administrator.

For the reasons set out in the Supplementary Information Section, Part 131, subpart A, of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 131—[AMENDED]

1. The authority citation for Part 131 continues to read as follows:

Authority: Clean Water Act, Pub. L. 92-500, as amended; 33 U.S.C. 1251 *et seq.*

2. Section 131.3 is amended by revising paragraph (j) and adding paragraphs (k) and (l) to read as follows:

§ 131.3 Definitions.

* * * * *

(j) *States* include: The 50 States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and Indian Tribes that EPA determines qualify for treatment as States for purposes of water quality standards.

(k) *Federal Indian Reservation, Indian Reservation,* or *Reservation* means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation."

(l) *Indian Tribe* or *Tribe* means any Indian Tribe, band, group, or community recognized by the Secretary of the Interior and exercising governmental authority over a Federal Indian reservation.

3. Section 131.4 is revised to read as follows:

§ 131.4 State authority.

(a) States (as defined in § 131.3) are responsible for reviewing, establishing, and revising water quality standards. As recognized by section 510 of the Clean Water Act, States may develop water quality standards more stringent than required by this regulation.

(b) States (as defined in § 131.3) may issue certifications pursuant to the requirements of Clean Water Act section 401. Revisions adopted by States shall be applicable for use in issuing State certifications consistent with the provisions of § 131.21(c).

(c) Where EPA determines that a Tribe qualifies for treatment as a State for purposes of water quality standards. The Tribe likewise qualifies for treatment as a State for purposes of certifications conducted under Clean Water Act section 401.

4. Section 131.5 is amended by redesignating the introductory text as paragraph (a), paragraphs (a) through (e) are redesignated as paragraphs (a)(1) through (a)(5), and a new paragraph (b) is added to read as follows:

§ 131.5 EPA authority.

* * * * *

(b) Section 401 of the Clean Water Act authorizes EPA to issue certifications pursuant to the requirements of section 401 in any case where a State or interstate agency has no authority for issuing such certifications.

5. Section 131.7 is added to read as follows:

§ 131.7 Dispute resolution mechanism.

(a) Where disputes between States and Indian Tribes arise as a result of differing water quality standards on common bodies of water, the lead EPA Regional Administrator, as determined

based upon OMB circular A-105, shall be responsible for acting in accordance with the provisions of this section.

(b) The Regional Administrator shall attempt to resolve such disputes where:

(1) The difference in water quality standards results in unreasonable consequences in another jurisdiction, either a State or an Indian reservation;

(2) The dispute is between a State (as defined in § 131.3(j), but exclusive of all Indian Tribes) and a Tribe which EPA has determined qualifies to be treated as a State for purposes of water quality standards;

(3) A reasonable effort to resolve the dispute without EPA involvement has been made;

(4) The requested relief is consistent with the provisions of the Clean Water Act and other relevant law;

(5) The differing State and Tribal water quality standards have been adopted pursuant to State and Tribal law and approved by EPA; and

(6) A valid written request has been submitted by either the Tribe or the State.

(c) Either a State or Tribe may request EPA to resolve any dispute which satisfies the criteria of paragraph (b) of this section. Written requests for EPA involvement should be submitted to the lead Regional Administrator and must include:

(1) A concise statement of the unreasonable consequence that are alleged to have arisen because of differing water quality standards;

(2) A concise description of the actions which have been taken to resolve the dispute without EPA involvement;

(3) A concise indication of the water quality standards provision which has resulted in the alleged unreasonable consequences;

(4) Factual data to support the alleged unreasonable consequences; and

(5) A statement of the relief sought from the alleged unreasonable consequences.

(d) Where, in the Regional Administrator's judgment, EPA involvement is appropriate based on the factors of paragraph (b) of this section, the Regional Administrator shall promptly notify the parties in writing that he/she is initiating an EPA dispute resolution action and solicit their written response. The Regional Administrator shall also make reasonable efforts to ensure that other interested individuals or groups have notice of this action.

(e) If in accordance with applicable State and Tribal law an Indian Tribe and State have entered into an agreement that resolves the dispute or establishes a mechanism for resolving a dispute, EPA shall defer to this agreement where it is consistent with the Clean Water Act and where it has been approved by EPA.

(f) EPA dispute resolution actions shall be consistent with one or a combination of the following options:

(1) *Mediation.* The Regional Administrator may appoint a mediator to mediate the dispute. Mediators shall be EPA employees, employees from other Federal agencies, or other individuals with appropriate qualifications.

(i) Where the State and Tribe agree to participate in the dispute resolution process, mediation with the intent to establish Tribal-State agreements, consistent with Clean Water Act section 518(d), shall normally be pursued as a first effort.

(ii) Mediators shall act as neutral facilitators whose function is to encourage communication and negotiation between all parties to the dispute.

(iii) Mediators may establish advisory panels, to consist in part of representatives from the affected parties, to study the problem and recommend an appropriate solution.

(iv) The procedure and schedule for mediation of individual disputes shall be determined by the mediator in consultation with the parties.

(v) If formal public hearings are held in connection with the actions taken under this paragraph, Agency requirements at 40 CFR 25.5 shall be followed.

(2) *Arbitration.* Where the parties to the dispute agree to participate in the dispute resolution process, the Regional Administrator may appoint an arbitrator or arbitration panel to arbitrate the dispute. Arbitrators shall be EPA employees, employees from other Federal agencies, or other individuals with appropriate qualifications. Arbitration panels shall include appropriate members to be selected by the Regional Administrator in consultation with the parties to the dispute.

(i) The arbitrator or arbitration panel shall conduct one or more private or public meetings with the parties and actively solicit information pertaining to the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, present and historical water uses, the quality of the waters subject to such standards, and other factors relevant to the dispute.

(ii) Following consideration of relevant factors as defined in paragraph (f)(2)(i) of this section, the arbitrator or arbitration panel shall have the authority and responsibility to provide all parties and the Regional Administrator with a written recommendation for resolution of the dispute. Arbitration panel recommendations shall, in general, be reached by majority vote. However, where the parties agree to binding arbitration, or where required by the Regional Administrator, recommendations of such arbitration panels may be unanimous decisions. Where binding or non-binding arbitration panels cannot reach a unanimous recommendation after a reasonable period of time, the Regional Administrator may direct the panel to issue a non-binding decision by majority vote.

(iii) The arbitrator or arbitration panel members may consult with EPA's Office of General Counsel on legal issues, but otherwise shall have no *ex parte* communications pertaining to the dispute. Arbitrators or arbitration panel members who are EPA employees shall act independently from the normal hierachy within the Agency.

(iv) The parties are not obligated to abide by the arbitrator's or arbitration panel's recommendation unless they voluntarily entered into a binding agreement to do so.

(v) If a party to the dispute believes that the arbitrator or arbitration panel has recommended an action contrary to or inconsistent with the Clean Water Act, the party may appeal the arbitrator's recommendation to the Regional Administrator. The request for appeal must be in writing and must include a description of the statutory basis for altering the arbitrator's recommendation.

(vi) The procedure and schedule for arbitration of individual disputes shall be determined by the arbitrator or arbitration panel in consultation with parties.

(vii) If formal public hearings are held in connection with the actions taken under this paragraph, Agency requirements at 40 CFR 25.5 shall be followed.

(3) *Dispute resolution default procedure.* Where one or more parties (as defined in paragraph (g) of this section) refuse to participate in either the mediation or arbitration dispute resolution processes, the Regional Administrator may appoint a single official or panel to review available information pertaining to the dispute and to issue a written recommendation for resolving the dispute. Review officials shall be EPA employees, employees from other Federal agencies,

or other individuals with appropriate qualifications. Review panels shall include appropriate members to be selected by the Regional Administrator in consultation with the participating parties. Recommendations of such review officials or panels shall, to the extent possible given the lack of participation by one or more parties, be reached in a manner identical to that for arbitration of disputes spcified in paragraphs (f)(2)(i) through (f)(2)(vii) of this section.

(g) *Definitions.* For the purposes of this section:

(1) *Dispute resolution mechanism* means the EPA mechanism established pursuant to the requirements of Clean Water Act section 518(e) for resolving unreasonable consequences that arise as a result of differing water quality standards that may be set by States and Indian Tribes located on common bodies of water.

(2) *Parties* to a State-Tribal dispute include the State and the Tribe and may, at the discretion of the Regional Administrator, include an NPDES permittee, citizen, citizen group, or other affected entity.

6. Section 131.8 is added to read as follows:

§ 131.8 Requirements for Indian tribes to be treated as states for purposes of water quality standards.

(a) The Regional Administrator, as determined based on OMB Circular A–105, may treat an Indian Tribe as a State for purposes of the water quality standards program if the Tribe meets the following criteria:

(1) The Indian Tribe is recognized by the Secretary of the Interior and meets the definitions in § 131.3 (k) and (l).

(2) The Indian Tribe has a governing body carrying out substantial governmental duties and powers.

(3) The water quality standards program to be administered by the Indian Tribe pertains to the management and protection of water resources which are within the boundaries of the Indian reservation and held by the Indian Tribe, within the boundaries of the Indian reservation and held by the United States in trust for the Indians, within the boundaries of the Indian reservation and held by a member of the Indian Tribe if such property interest is subject to a trust restriction on alienation, or otherwise within the borders of the Indian reservation.

(4) The Indian Tribe is reasonably expected to be capable, in the Regional Administrator's judgment, of carrying out the functions of an effective water quality standards program in a manner consistent with the terms and purposes of the Act and applicable regulations.

(b) Requests by Indian Tribes for treatment as States for purposes of water quality standards should be submitted to the lead EPA Regional Administrator. The application shall include the following information:

(1) A statement that the Tribe is recognized by the Secretary of the Interior.

(2) A descriptive statement demonstrating that the Tribal governing body is currently carrying out substantial governmental duties and powers over a defined area. The statement shall:

(i) Describe the form of the Tribal government;

(ii) Describe the types of governmental functions currently performed by the Tribal governing body such as, but not limited to, the exercise of police powers affecting (or relating to) the health, safety, and welfare of the affected population, taxation, and the exercise of the power of eminent domain; and

(iii) Identify the source of the Tribal government's authority to carry out the governmental functions currently being performed.

(3) A descriptive statement of the Indian Tribe's authority to regulate the quality of reservation waters. The statement shall include:

(i) A map or legal description of the area over which the Indian Tribe asserts authority to regulate surface water quality;

(ii) A statement by the Tribe's legal counsel (or equivalent official) which describes the basis for the Tribe's assertion of authority;

(iii) A copy of all documents such as Tribal constitutions, by-laws, charters, Executive orders, codes, ordinances, and/or resolutions which support the Tribe's assertion of authority; and

(iv) An identification of the surface waters for which the Tribe proposes to establish water quality standards.

(4) A narrative statement describing the capability of the Indian Tribe to administer an effective water quality standards program. The narrative statement shall include:

(i) A description of the Indian Tribe's previous management experience including, but not limited to, the administration of programs and services authorized by the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 *et seq.*), the Indian Mineral Development Act (25 U.S.C. 2101 *et seq.*), or the Indian Sanitation Facility Construction Activity Act (42 U.S.C. 2004a);

(ii) A list of existing environmental or public health programs administered by the Tribal governing body and copies of related Tribal laws, policies, and regulations;

(iii) A description of the entity (or entities) which exercise the executive, legislative, and judicial functions of the Tribal government;

(iv) A description of the existing, or proposed, agency of the Indian Tribe which will assume primary responsibility for establishing, reviewing, implementing, and revising water quality standards;

(v) A description of the technical and administrative capabilities of the staff to administer and manage an effective water quality standards program or a plan which proposes how the Tribe will acquire additional administrative and technical expertise. The plan must address how the Tribe will obtain the funds to acquire the administrative and technical expertise.

(5) Additional documentation required by the Regional Administrator which, in the judgment of the Regional Administrator, is necessary to support a Tribal request for treatment as a State.

(6) Where the Tribe has previously qualified for treatment as a State under a Clean Water Act or Safe Drinking Water Act program, the Tribe need only provide the required information which has not been submitted in a previous treatment as a State application.

(c) Procedure for processing an Indian Tribe's application for treatment as a State.

(1) The Regional Administrator shall process an application of an Indian Tribe for treatment as a State submitted pursuant to § 131.8(b) in a timely manner. He shall promptly notify the Indian Tribe of receipt of the application.

(2) Within 30 days after receipt of the Indian Tribe's application for treatment as a State, the Regional Administrator shall provide appropriate notice. Notice shall:

(i) Include information on the substance and basis of the Tribe's assertion of authority to regulate the quality of reservation waters; and

(ii) Be provided for all appropriate governmental entities.

(3) The Regional Administrator shall provide 30 days for comments to be submitted on the Tribal application. Comments shall be limited to the Tribe's assertion of authority.

(4) If a Tribe's asserted authority is subject to a competing or conflicting claim, the Regional Administrator, after consultation with the Secretary of the Interior, or his designee, and in

consideration of other comments received, shall determine whether the Tribe has adequately demonstrated that it meets the requirements of § 131.8(a)(3).

(5) Where the Regional Administrator determines that a Tribe meets the requirements of this section, he shall promptly provide written notification to the Indian Tribe that the Tribe has qualified to be treated as a State for purposes of water quality standards and that the Tribe may initiate the formulation and adoption of water quality standards approvable under this part.

[FR Doc. 89-21962 Filed 9-21-89; 8:45 am]
BILLING CODE 6560-50-M

Federal Register

Friday
September 22, 1989

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Establishment of the Memphis Terminal Control Area and Revocation of the Memphis International Airport Airport Radar Service Area; TN; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AWA-5]

RIN 2120-AD05

Establishment of the Memphis Terminal Control Area and Revocation of the Memphis International Airport Airport Radar Service Area; TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes a Terminal Control Area (TCA) at Memphis, TN. The TCA will consist of airspace from the surface or higher within a 30-nautical-mile radius of the Memphis International Airport up to and including 10,000 feet above mean sea level (MSL). This action will increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around Memphis International Airport while providing sufficient flexibility to permit aircraft operating under visual flight rules (VFR) to operate within or outside the TCA. Memphis International Airport is currently served by an Airport Radar Service Area (ARSA) which is rescinded concurrent with the establishment of this TCA.

EFFECTIVE DATE: 0901 u.t.c., October 19, 1989.

FOR FURTHER INFORMATION CONTACT: Alton D. Scott, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9252.

SUPPLEMENTARY INFORMATION:

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding airports with high density air traffic by providing an area in which all aircraft will be subject to certain operating rules and equipment requirements.

The density of traffic and the type of operations being conducted in the airspace surrounding major terminals increase the probability of midair collisions. In 1970, an extensive study found that the majority of midair collisions occurred between a general aviation (GA) aircraft and an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue Notices proposing the establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2C, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 24 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques on more airports so as to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

User Group Participation

The TCA adopted by this amendment is the product of discussions with a broad representation of the aviation community. In conjunction with this action, the FAA will continue to work cooperatively with local user groups to ensure that the TCA is effective for all users by identifying any adjustments or modifications that appear necessary. Through joint FAA and user cooperation, any problems that arise can then be identified and corrective action taken when necessary.

The TCA configuration adopted here has been developed through substantial public participation. Initially, an informal airspace meeting was held on October 4, 1988, to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Memphis TCA. Subsequently, a TCA Ad Hoc Committee was formed comprising a cross section of the aviation community. After those initial meetings and after extensive coordination with the TCA Ad Hoc Committee, a tentative TCA configuration was prepared for public discussion. As a result of those efforts, further adjustments to the TCA configuration were made and were reflected in the FAA's modified configuration proposed formally for adoption. An additional opportunity for public participation was provided by a Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on May 26, 1989 (54 FR 22844). Comments were received in response to the Notice. Due consideration has been given to these comments as well as the comments received at the various meetings.

Discussion of Comments

In response to the TCA proposal, the FAA received fourteen written comments from individuals, pilots and owners of aircraft, local government agencies, and aviation trade and industry associations. In addition, the FAA has had the benefit of considerable dialogue at user group meetings. The FAA appreciates the thoughtful and meaningful contributions and the interest expressed by all of those who took time to participate in the several steps of this rulemaking proceeding. The following is an analysis of the comments received.

Several commenters suggested that Memphis International Airport does not have the traffic count to qualify for TCA establishment. In order to qualify for TCA status, the primary airport must serve at least 3.5 million passengers enplaned annually; or the primary airport must have a total airport operations count of 300,000, of which 50 percent is air carrier. The Memphis International Airport had 5,341,763 enplaned passengers in 1987 (the unofficial number of enplaned passengers for 1988 was 4,905,590) which is well above the 3.5 million necessary for consideration as a TCA candidate. The total airport operation count at Memphis International Airport is 384,049 of which 58 percent is air carrier. This exceeds the criteria necessary for establishment of a TCA. Additionally, within the proposed boundaries, more than 400,000 flight operations are conducted annually.

The Air Line Pilots Association (ALPA) and the Memphis-Shelby County Airport Authority strongly supported the establishment of a TCA at Memphis International Airport: "* * * it will increase the level of safety for all aircraft operating in the vicinity of Memphis."

One commenter suggested excluding Olive Branch Airport and the West Memphis Airport from the proposed

TCA requirements. West Memphis and Olive Branch Airports are contained in Area C of the proposed TCA. This airspace is necessary to allow adequate space for departures and mixing of inbound aircraft. As the floor of the TCA in that area is 3,000 feet MSL, there exists adequate space for ingress/egress to these airports.

Other commenters were critical of the Mode C veil (that airspace within 30 nautical miles of a primary TCA airport, as established in 53 FR 23356, June 21, 1988) which would be established concurrent with the TCA. The Mode C rule requires pilots to have and operate a transponder with Mode C in their aircraft when operating within 30 nautical miles of any designated TCA primary airport (commonly called Mode C veil) from the surface to 10,000 feet MSL. The advantages of including the requirement for transponder with Mode C are: (1) To provide automatic conflict alert and low-altitude alert warnings to controllers which can be quickly relayed to the pilot; (2) to provide controllers with a continuous, more complete traffic picture; (3) to reduce radio communications; (4) to assist aircraft being controlled by ATC to avoid aircraft operating without ATC assistance; and (5) to increase airspace capacity.

Several commenters, supported, in lieu of the TCA, a climb and descent corridor concept which would keep jets in a narrow area and at high altitudes until necessary to descend. The primary concern in any proposed TCA action is providing the highest degree of safety while preserving the most efficient use of the available terminal airspace. Simulations of the climb/descent corridor concept concluded that, while corridors do provide a degree of safety for aircraft arriving and departing terminal areas, they do not provide adequate and/or sufficient airspace to effectively vector, sequence, and meter the vast number of aircraft served in major terminal areas today. The use of corridors would result in a drop in capacity for most terminal areas because of the different performance characteristics of aircraft.

The Air Transport Association of America (ATA) was opposed to the cutouts provided in Area D. This airspace configuration would provide an area to contain aircraft during climb and descent profiles to transition between the terminal and en route structure, and allow VFR aircraft to circumnavigate the TCA using the north and south bypass airways. This airspace, although excluded from the lateral boundaries of the TCA, is included in the Mode C veil.

The Memphis Soaring Society (MSS) and The Soaring Society of America (SSA) objected to the TCA because it would limit soaring activities. Both organizations suggested raising the floor of Area C to 4,200 feet MSL. While the MSS suggested providing a corridor to the east, the SSA suggested raising the floor of Area D to 6,200 feet MSL for glider activity. Additionally, the MSS and the SSA suggested decreasing the outer boundary of the TCA from 30 to 25 nautical miles. If the floor of the TCA was raised in these areas as proposed, the capacity of Memphis International Airport would be greatly affected.

This airspace is necessary to sequence and vector traffic landing Runway 27 and ensure traffic containment above the floor of the TCA: (1) One third of all landing traffic at Memphis use Runway 27; (2) during peak traffic, 20 aircraft per hour use this runway; and (3) almost 100 jets and/or turboprops utilize Runway 27 daily. Additionally, many aircraft from Memphis depart to the northeast and east through this airspace. The TCA at Memphis International Airport must include this airspace in order to contain these departures within the TCA and allow adequate airspace to ensure required separation between arrivals, departures, and overflights.

The SSA also suggested adding arrival/departure extension areas starting from 20 miles and extending to 25 miles in three or four areas of the proposed TCA to contain air carrier arrivals and departures. This proposal would limit the flexibility of the Memphis TCA and would not allow the necessary segregation of arrivals and departures transitioning between the terminal and enroute environment.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a TCA at the Memphis International Airport, TN, using NAVAID radials and distances where practical to accommodate current traffic flows and provide a greater degree of safety in known areas of congestion involving controlled IFR and uncontrolled VFR flights. Consequently, the FAA has determined that establishment of a TCA at Memphis International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Memphis International Airport is currently served by an ARSA which is rescinded with the establishment of this TCA.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to ensure that the public is not burdened with rules having costs which outweigh benefits. This section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Memphis, TN.

This final rule is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Memphis International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this rule is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of this rule to be $4.9 million ($2.7 million, discounted, 15 years) in 1987 dollars. Approximately $2.3 million (discounted) or 84 percent of the total estimated costs will be incurred by the FAA primarily for additional personnel. The remaining costs will be incurred by small general aviation (GA) aircraft operators who will be required under this rule to equip their aircraft with Mode C transponders sooner than they would have for the former Memphis ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule will be implemented in two phases. Phase I, which began on July 1, 1989, requires a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 24 TCA's.

Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, most aircraft without Mode C transponders will need ATC authorization to fly within 30 nautical miles of a TCA primary airport, within

10 nautical miles of an ARSA primary airport, or within controlled airspace of other designated airports that will also require Mode C transponders.

Thus, this evaluation, as well as the Mode C rule, assumes that all operators of aircraft without Mode C will acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment will be aircraft without electrical systems or others authorized by ATC. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this rule will only incur the opportunity cost of capital necessary for them to acquire, install, and maintain Mode C transponders one year earlier than they will be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This final rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, will take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this rule would be the reduction in the probability of midair collisions resulting from converting the former ARSA to a TCA. However, because of the recent Mode C rule (and to some extent, the rule for Traffic Alert and Collision Avoidance System (TCAS), 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this rule is expected to be significantly lower. Nevertheless, this TCA rule is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale.

This point can be illustrated with the use of statistical models based on actual and projected critical near midair collision (NMAC) incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot, but, rather, is due purely to chance.) Since midair collisions involving part 135 aircraft, and especially part 121 aircraft, are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety from implementing this rule.

Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 68 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate more efficient separation of aircraft in congested airspace.

As the result of these findings, if the former Memphis ARSA had remained intact (and the recent Mode C and TCAS rules were not in effect), the Memphis Terminal Area would be expected to experience approximately 2.2 critical NMAC's annually (or 34 critical NMAC's over the next 15 years). Due to the new TCA, however, this figure could be reduced to approximately 0.7 critical NMAC's annually (or 11 critical NMAC's over the next 15 years). Thus, over the next 15 years, this rule could result in a reduction of approximately 23 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's will never materialize as predicted primarily because of the Mode C rule and, to some extent, the TCAS rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights below the outer 5-mile "shelf") of an ARSA primary airport must be equipped with a Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989, aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this rule to create a TCA in 1989 at Memphis is that the safety enhancements of the Mode C and TCAS requirements will occur one year earlier than they otherwise would be expected without this rule. A second safety benefit will be in terms of the lowered likelihood of midair collisions as a result of expanding the lateral boundaries of mandatory ATC by 20 nautical miles due to the replacement of the Memphis ARSA with the new TCA.

The safety benefits of the establishment of a new TCA, while positive, will be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this TCA rule essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of $344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimate of $310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these potential safety benefits are attributed to the TCAS rule. Thus, the potential safety benefits of this TCA rule and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of this rule will be improved operational efficiency on the part of FAA air traffic controllers. Under this TCA rule, Mode C transponder requirements are expected to ease controller workload per aircraft being controlled because of the reduction in radio communications. It will also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the new TCA will be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA.

Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR aircraft delayed during busy periods. As the result of converting the former Memphis ARSA to a TCA, the improved operational efficiency will accrue because of the availability of additional air traffic controllers. If the former Memphis ARSA had remained intact, such air traffic personnel would not be required. Therefore, potential benefits of improved operational efficiency, which are not considered to be quantifiable in monetary terms in this evaluation, are attributed to this TCA final rule rather than either the Mode C rule or TCAS rule.

c. Comparison of Benefits and Costs

The total cost that will accrue from implementation of this rule is estimated to be $2.7 million (discounted, in 1987 dollars). Approximately, 16 percent of this total cost estimate will fall on those GA aircraft operators without Mode C

transponders in the form of opportunity costs by requiring them to acquire such avionics equipment, including maintenance, one year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted will incur an estimated one-time cost ranging from $86 to $191 (discounted) under this rule. (As the result of the opportunity cost concept, the derivation of these cost estimates are too complex to discuss briefly. Therefore, the reader should refer to the detailed regulatory evaluation, which is contained in the docket, for a full explanation of the method by which these cost estimates were derived.)

The potential benefits of this rule will be the lowered likelihood of midair collisions from the conversion of the former ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this TCA rule independent of the Mode C and TCAS rules; however, the FAA believes that the risk will be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately two-thirds less frequently in a TCA than in an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's will continue to experience reduced critical NMAC's. In addition, this rule will generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

Clearly, in view of the cost of compliance relative to the significant reduction in the likelihood of midair collisions as well as improved operational efficiency in the Memphis Terminal Area, the FAA firmly believes this rule is cost-beneficial.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this final rule.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this rule will be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this rule already have Mode C transponders due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is $3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the annual one-time cost per impacted aircraft would be approximately $210 (undiscounted, for the purpose of comparability with the figure of $3,700). The total annual one-time cost per small entity would amount to an estimated $1,890. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of $3,700. Therefore, the FAA believes this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

This final rule will neither have an effect on the sale of foreign aviation products or services in the United States, nor will it have an effect on the sale of U.S. products or services in foreign countries. This is because the rule will only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from $900 (to upgrade from a Mode A transponder) to $2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," the FAA has determined that this regulation (1) is not a "major rule" under Executive Order 12291; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

The FAA has determined that the users of the Memphis International Airport and surrounding area will benefit from the implementation of the TCA. In order to maximize the benefit at the earliest time, the FAA will have the TCA charted on the next available charting date, which is October 19, 1989, and is making the implementation of the TCA effective on that charting date. Therefore, due to the need to implement the TCA at the earliest possible time, the FAA finds good cause for making this amendment effective in less than 30 days from the date of the publication of this amendment.

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 71 of the Federal Aviation Regulations (14 CFR part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Memphis, TN [New]

Primary Airport

Memphis International Airport (lat. 35°02'59" N., long. 89°58'43" W.) Memphis VORTAC (lat. 35°03'45" N., long. 89°58'53" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within a 7-mile radius of the Memphis VORTAC extending clockwise from the Memphis VORTAC 075° radial to the Memphis VORTAC 275° radial and within a 5-mile radius of the Memphis VORTAC extending clockwise from the Memphis VORTAC 275° radial to the Memphis VORTAC 075° radial.

Area B. That airspace extending upward from 1,800 feet MSL to and including 10,000 feet MSL within the area bounded by a line beginning at a point 13 miles northeast of the Memphis International Airport on the Memphis VORTAC 037° radial extending southward to the Memphis VORTAC 052° radial 10-mile fix, extending to the point where it intercepts the 10-mile radius of the Memphis VORTAC; thence clockwise along the 10-mile radius of the Memphis VORTAC until the interception of a line from the Memphis VORTAC 126° radial 10-mile fix extending south to the Memphis VORTAC 147° radial 15-mile fix to the point where it intercepts the 15-mile radius of the Memphis VORTAC; thence clockwise along the 15-mile radius of the Memphis VORTAC to the interception of a line from the Memphis VORTAC 211° radial 15-mile fix extending northward to the Memphis VORTAC 226° radial 11-mile fix to the point where it intercepts the 11-mile radius of the Memphis VORTAC; thence clockwise along the 11-mile radius of the Memphis VORTAC to the interception of a line from the Memphis VORTAC 312° radial 11-mile fix extending northward to the Memphis VORTAC 321° radial 13-mile fix; thence clockwise along the 13-mile radius of the Memphis VORTAC to the point of beginning and excluding that airspace within Area A.

Area C. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within a 20-mile radius of the Memphis VORTAC, excluding that airspace within Areas A and B.

Area D. That airspace extending upward from 5,000 feet MSL to and including 10,000 feet MSL within a 30-mile radius of the Memphis VORTAC, excluding that airspace northwest of a line from the Memphis VORTAC 295° radial 30-mile fix to the Memphis VORTAC 352° radial 30-mile fix, excluding that airspace southeast of a line from the Memphis VORTAC 114° radial 30-mile fix to the Memphis VORTAC 157° radial 30-mile fix and excluding that airspace within Areas A, B, and C.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

Memphis International Airport, TN [Removed]

Issued in Washington, DC, on September 19, 1989.

James B. Busey,

Administrator.

[FR Doc. 89-22410 Filed 9-19-89; 12:37 pm]

BILLING CODE 4910-13-M

Federal Register

Friday
September 22, 1989

Part VII

Department of Labor

Employment and Training Administration

20 CFR Part 626 et al.

Job Training Partnership Act: Economic Dislocation and Worker Adjustment Assistance Act; Employment and Training Services to Dislocated Workers; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 626, 627, 628, 629, 630, and 631

Job Training Partnership Act: Economic Dislocation and Worker Adjustment Assistance Act; Employment and Training Services to Dislocated Workers

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is issuing final regulations to implement provisions of the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), which amends portions of the Job Training Partnership Act (JTPA) and substitutes a completely new title III. EDWAA was enacted as subtitle D of title VI of the Omnibus Trade and Competitiveness Act of 1988. JTPA title III establishes programs of employment and training assistance for dislocated workers.

EFFECTIVE DATE: October 23, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Employment and Training Programs. Telephone: (202) 535-0577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 23, 1988, the Omnibus Trade and Competitiveness Act (OTCA), including title VI, subtitle D, the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), was enacted. (Pub. L. 100-418, 102 Stat. 1107.) Existing provisions of title III of the Job Training Partnership Act were replaced by EDWAA.

Rulemaking History

On October 13, 1982, the President signed the Job Training Partnership Act, Public Law 97-300 (JTPA or the Act).

It is the purpose of the Act to establish programs to prepare youth and unskilled adults for entry into the labor force; and to afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment.

Title I of the Act sets forth general requirements for programs under the Act, as well as some requirements for State operation of programs under the Act. Title II of the Act provides requirements for State operation of adult and youth programs under the Act. Title III of the Act provides for operation of State programs of employment and training assistance for dislocated workers. Title IV provides requirements for special programs for targeted groups, such as Native Americans and migrant farmworkers; as well as for the Job Corps, veterans and other specialized programs.

Amendments to JTPA were enacted in the Job Training Partnership Act Amendments, Public Law 97-404 (December 31, 1982); the Carl D. Perkins Vocational Education Act, Public Law 98-524 (October 19, 1984); the Job Training Partnership Act Amendments of 1986, Public Law 99-496 (October 16, 1986); and the Homeless Eligibility Clarification Act, title XI of the Anti-Drug Abuse Act of 1986, Public Law 99-570 (October 27, 1986). See also section 713(b) of Public Law 99-159, National Science, Engineering, and Mathematics Authorization Act of 1986, which contains technical amendments to the Carl D. Perkins Vocational Education Act which, in turn, amend JTPA.

Final regulations promulgated by the Department of Labor (the Department of DOL) to implement the provisions of the Act were published in the **Federal Register** at 48 FR 11078 (March 15, 1983); 48 FR 48753 (October 20, 1983); 48 FR 49198 (October 24, 1983); and 48 FR 52438 (November 18, 1983). See 20 CFR Part 626-636 and 684 (1988).

These regulations have been amended by **Federal Register** publication on three additional occasions: On April 26, 1985, at 50 FR 16473, as corrected on June 13, 1985, at 50 FR 24764; on August 29, 1986, at 51 FR 30856; and on February 12, 1988 at 53 FR 4262. On October 24, 1988, DOL published an interim final rule to implement EDWAA. (53 FR 41572). Comments were requested through November 23, 1988.

Discussion of Interim Final Rule, Comments, and Final Rule

The October 24, 1988, interim final regulations complied with the statutory requirement in section 6305(f) of OTCA (29 U.S.C. 1651 note) that regulations be published by November 1, 1988. At the same time, the interim final regulations provided the opportunity for comment. All implementation actions which should have been completed prior to the publication of final regulations should have been consistent with the interim final regulations. Modification of the JTPA regulations was necessary to incorporate the revisions contained in the amended legislation.

It is important to note that the provisions of EDWAA related to employment and training assistance for dislocated workers and other changes were enacted as amendments to the Job Training Partnership Act. Thus, as is the case with existing regulations, provisions of the JTPA regulations in parts 626, 627, 628, and 629 which apply generally to JTPA programs including title III, or which apply specifically to title III are applicable to the amended title III program unless revised herein. In numerous cases, as reflected in the interim final regulations, it was necessary to revise sections of the existing regulations particularly in parts 626, 627, 628, and 629 to reflect provisions of the new legislation.

The Department's intent in developing these regulations has been to provide substantial responsibility and discretion to States in developing policy and implementing procedures for this new legislation. Thus, in many instances in the regulations, responsibility for certain decisions in vested in the State or in substate areas.

In publishing the interim final rule, certain JTPA general regulatory provisions of parts 628 and 629 were revised to reflect their applicability or non-applicability to EDWAA programs, including additions where necessary to correspond to the provisions of the new part 631. These changes are summarized below. Statutory citations to JTPA also have been incorporated throughout the various sections of the parts.

Eighty-eight sets of comments were received in response to the interim final rule. Thirty-three were received from States and State-level agencies, 21 were from local government and other local entities, 25 were from State and local representatives of organized labor, three were from public interest groups, two were from veterans' service organizations, two were from members of Congress, one each was from a Federal agency and an individual.

Major comments on the interim final rule, DOL's analysis of and reaction to those comments, and major changes made in the final rule are discussed below.

Recomposition of the State Job Training Coordinating Council (SJTCC)

EDWAA amended section 122(a)(3) of the Act to establish a new membership composition for the SJTCC. The membership is to be composed of 30 percent business and industry representatives, 30 percent State and local government and local education representatives, 30 percent organized labor and community-based organization representatives, and 10 percent representation from the general public. In a case in which the substate area is a State, Governors were expected to consider the new

composition and responsibilities of the SJTCC where such council, or portion thereof, was being reconstituted to form the private industry council pursuant to section 102(h) of the Act.

The Department received comments in two major areas on this section, namely the requirement that the SJTCC be reconstituted in single statewide substate area States under title III, and the membership and participation of organized labor on the SJTCC.

Three commenters indicated that the Special Rule at section 311(f) of JTPA exempted single statewide substate area States from having to recompose the SJTCC to meet the new membership requirements where the SJTCC had been reconstituted to form the Private Industry Council (PIC) under the provisions of section 102(h) of the Act. DOL's interpretation of EDWAA is that it is clear that the Congress intended that States reconstitute the SJTCC. In doing so, the Congress intended that the membership of the SJTCC first be changed to meet the new membership requirements, and through the insertion of the Special Rule at JTPA section 311(f) that single statewide substate area States could then invoke the provisions of JTPA section 102(h) to reconstitute the SJTCC as the PIC.

Twenty-two commenters indicated that the regulations should provide for a "net increase" in membership on the SJTCC by organized labor and that there be an increased role and participation by organized labor in the activities of the SJTCC. DOL's interpretation is that the Congress intended that there be an increase in the labor membership on the SJTCC, that there be representation from both organized labor and community-based organizations, but that neither EDWAA nor the Conference Report contains specific provisions on the numerical composition in meeting the 30 percent requirement for combined representation by organized labor and community-based organizations on the SJTCC. See H.R. Rep. No. 100-576 (April 20, 1988) (made applicable to OTCA by section 2 of that statute). This decision is left to the Governor. With regard to the nomination process, it is reasonable to expect that the Governor will look to the State AFL-CIO as well as other organizations such as the State Chamber of Commerce for nominations to the SJTCC.

No change has been made to the final rule.

General Program Requirements

Five commenters indicated that the 45-day enrollment requirement in § 629.1(d) should be changed to waive such requirement for individuals who have been determined eligible for title III and have been issued a certificate of continuing eligibility pursuant to the provisions of § 631.53. The Department agrees with this comment and language has been added to the final rule at § 629.1(d) and § 631.3(g) to indicate that in such instances the 45-day enrollment is waived and no subsequent application need be taken prior to participation.

Labor Standards

The interim final rule added a new § 629.4, to reiterate certain provisions of sections 141 and 143 of the Act which are of particular significance to title III programs and which reflect concerns raised in the enactment of EDWAA. These provisions prohibit assistance in the relocation of establishments when such relocation will result in an increase in unemployment in the original location or any other area, and the displacement of employees by participants.

Twenty-two commenters recommended that this section be expanded to incorporate other labor standards set forth in section 143 of the Act, with special emphasis on the need to obtain union consultation for programs planning to serve substantial numbers of union members.

As noted earlier, the provisions of § 629.4 pertaining to relocation and displacement were included to highlight these areas and to reflect concerns raised in the enactment of EDWAA. The provisions of sections 141, 142, and 143 regarding general program requirements, benefits, and labor standards are incorporated in their entirety by reference at § 629.1(a) and apply, as appropriate, to all programs under titles I, II, and III of the Act. Further, EDWAA contains certain requirements regarding full consultation with a labor organization when services will be provided to a substantial number of members of such labor organization, and for a description of the means for involving labor organizations in the development and implementation of services which apply in addition to the review and comment provisions contained in section 141.

Therefore, the Department has made no substantive change in the final rule. However, the Department does recognize that the heading of this section may have contributed to some misunderstanding regarding its provisions and has changed the title to "Relocation and displacement."

Records Retention

Section 629.35(e) was amended in the interim final rule to indicate that the period of records retention for all JTPA records is three years from the last date authorized for expenditure of funds allotted to a State for a given program year, as set forth at section 161(b) of JTPA. This amendment was necessary to ensure that such records exist and are available for the purposes of JTPA audits.

Five commenters expressed concern that the change in the regulations imposed a six-year record retention period which would be burdensome and costly to administer, both at the State and substate grantee levels. One commenter suggested that the period of retention be three years from final expenditure date of the obligated funds. One commenter supported the change, indicating that it would ensure that sufficient records are available for JTPA audit purposes and to calculate adherence with the JTPA cost limitations in conjunction with the two-year job training plan.

DOL has given careful consideration to the comments received on the change contained in the interim final rule regarding the period of records retention as well as to internal concerns regarding the need to ensure the integrity of, and accountability for, JTPA funds. DOL recognizes that the change would mean that JTPA records would have to be maintained for a somewhat longer period of time, however, this was more a result of the three-year life of JTPA funds than the actual three-year record retention period. Under prior training and employment programs, recipients operated under an annual plan and funds were available for expenditure for one year, with a record retention period of three years beginning on the date of submission of the final total expenditure report for that year's funds. Under JTPA, programs are operated under a two-year job training plan, with funds available for expenditure for up to a total of three years. DOL's overriding concern is that, given the provisions of section 161(b) of the Act, sufficient records be maintained to satisfy the JTPA audit and recordkeeping requirements of sections 164 and 165 of the Act on a consistent basis throughout the JTPA system. DOL has, after careful review and extensive internal and external discussions, determined that the period of records retention could be adjusted to protect DOL's monitoring and oversight responsibilities while being responsive to commenters' concerns. Therefore, a change has been made to § 629.35(e) in the final rule to indicate that the period of records retention is two years from the date on which the annual expenditure report containing the final expenditures charged to a given program

year's allotment is submitted to DOL. All other records retention provisions of § 629.35 remain unchanged.

Recordkeeping

In preparing a final rule on EDWAA, the Department has received a comment recommending that a specific discussion of recordkeeping requirements to demonstrate compliance with new title III cost limitation provisions be added to the EDWAA regulations. In considering this comment, DOL has reviewed requirements that have applied to all of JTPA since the inception of programs under the Act. The JTPA regulations, as amended, contain a number of important references to the types of records necessary for a subrecipient to collect and maintain in order to demonstrate compliance with the Act and those rules, interpretations and definitions adopted by the State in accordance with the Governor's authority under the provisions of § 627.1.

The JTPA regulations at § 629.35(a) require the Governor to ensure that financial systems within the State provide fiscal control and accounting procedures sufficient to permit the tracing of expenditures to establish that funds have not been used in violation of any restrictions on their use. Section 629.35(c) requires that records be maintained to demonstrate compliance with relevant eligibility requirements, and with restrictions on specific activities. Section 629.35(d) requires that participant records be maintained as necessary for performance standards measurement, and paragraphs (e) and (f) of this section define the periods that JTPA records must be retained.

In addition, § 629.37(a) provides, in part, that costs charged to JTPA shall be consistent with applicable State and local laws, rules or regulations, as determined by the Governor. Paragraph (c) of this section requires the Governor to issue guidelines on allowable costs for statewide programs and SDA programs, and specifies types of expenditures that are allowable or unallowable costs for JTPA funds.

The JTPA regulations at § 629.38 (a) and (b) provide that allowable costs shall be charged against the training, administration, and participant support cost categories, and properly allocated. Paragraphs (c) and (d) outline the Governor's responsibility to ensure that programs administered at the State level and the SDA level "plan, control, and charge expenditures against the aforementioned cost categories." This is now repeated at § 631.13(a), in "Additional Title III Administrative Standards and Procedures." Therefore, States have an ongoing responsibility to issue specific cost recordkeeping requirements to all JTPA programs within the State, so that programs can demonstrate that expenditures have been controlled against applicable cost limits.

Following review of these provisions, the Department has determined that explicit authorities are contained in the body of present general JTPA regulation which adequately address the concern of the commenter. DOL believes, however, that the topic of methods to comply with the statutory cost limitations, including recordkeeping required by the Governor to demonstrate compliance, is an important one to bring to the attention of State and substate entities as existing rules and recordkeeping systems are adapted or rewritten for new EDWAA programs.

Allowable Costs

Section 629.37(b) was changed in the interim final rule to reference the recently promulgated 29 CFR part 97, which superseded 41 CFR part 29–70, general administrative requirements for DOL grants.

One commenter pointed out that the wording of the change could be read as applying the various Federal Cost Principles (*e.g.*, OMB Circulars A–87, A–122, and A–21; and 48 CFR part 31) referenced at 29 CFR 97.22(b) in their entirety to JTPA programs. DOL agrees that the changed wording could be interpreted this way, which was not the intent in making the change. The intent was to maintain, in the October 24, 1988, interim final rule, the same provision regarding making a determination of whether a cost was to be charged as a direct cost or as an indirect cost as that contained in 20 CFR 629.37(b) (1988 ed.), by updating the reference. New language has been added to § 629.37(b) in the final rule below to make DOL's intent clear in this regard.

Classification of Costs

A minor change has been made in § 629.38(e)(2)(i) of the final rule regarding the charging of costs for fixed-priced performance-based contracts to include retraining services under title III of the Act by indicating that the provisions apply for training under title II or for retraining under title III. In doing so, DOL noted that two of the activities listed at section 314 as retraining activities, *i.e.* out-of-area job search and relocation, were not appropriate activities for such contracts/agreements, and the final rule reflects this exclusion.

Limitations on Certain Costs

Section 629.39 was changed in the interim final rule to indicate that the provisions of this section on limitations on certain costs no longer apply to title III programs. The provisions that apply to title III in this regard are set forth at § 631.14.

One commenter indicated that the placement of the change (as a new paragraph (h), with the old paragraph being redesignated as (i)) made it unclear whether administrative cost pools were allowed. In making the change, there was no intent by DOL to imply any change in the current provisions which apply to the pooling of administrative costs for JTPA programs. The final rule includes a change to this section by transposing paragraphs (g) and (h), and indicates that the provisions of § 629.39 (a) through (f) do not apply to title III programs. One of the effects of this change is to clarify that the cost limitations under title II and title III do not apply to designated SDAs and substate areas which served as concentrated employment program (CEP) grantees under the Comprehensive Employment and Training Act. Also, substate areas have been included in the administrative cost pool provisions of paragraph (h). However, it should be noted that the limitations at § 631.14 apply to expenditure of funds as opposed to funds as allocated.

Performance Standards

Section 629.46 was changed in the interim final rule to indicate that the performance standards provisions of this section apply to title III, except that the provisions of paragraph (c)(2) of this section pertaining to the imposition of a reorganization plan for failure to meet performance standards for two consecutive years does not apply to title III.

Seven commenters submitted comments on the title III performance standards provisions of paragraph (d) of this section. The nature of these comments dealt with specifics regarding the standards (*e.g.*, requests for clarification on how a particular standard would be applied, requests for clarification on definitions to be used) rather than addressing the structure of the standards which is what was contemplated in setting forth the regulatory provisions. DOL does not believe that such specifics are matters to be addressed in the regulations, but rather are matters more appropriately addressed as part of the performance standard guidance which will be issued

administratively. No change is being made to this section in the final rule.

In addition to revisions and additions to administrative provisions, the final regulations below contain a revised part 631, which will replace all of existing part 631 for programs beginning July 1, 1989. Following is a brief discussion on the revised part 631.

Scope and Purpose

The Department has made a minor change at § 631.1(b) of the final rule to indicate that the rule applies to JTPA title III programs beginning with Program Year (PY) 1989 (July 1, 1989–June 30, 1990) to accommodate changes regarding the use of PY 1988 funds for EDWAA programs as described in § 631.70.

Definitions

In addition to definitions contained in sections 4, 301, and 303(e) of the Act, and § 626.4 of the JTPA regulations, an additional definition was added at § 631.2 of the interim final rule for "substantial layoff." This new definition was based upon the definition of "mass layoff" as contained in section 2(a)(3) of the recently enacted Worker Adjustment and Retraining Notification Act (WARN), Public Law 100–379, 102 Stat. 890 (August 4, 1988). 29 U.S.C. 2101(a)(3); see also 20 CFR 639.3(c), 53 FR 48884, 48891 (December 2, 1988).

Four commenters indicated that the numerical threshold established through the use of the WARN definition was too high, excluding most small and medium-sized businesses, and would unnecessarily restrict the States in the provision of rapid response services. They further indicated that the Governor should have the authority to establish the threshold for State rapid response based upon the circumstances in the State.

The definition of "substantial layoff" is pertinent to both eligibility for services and to the provisions of rapid response services. It was DOL's intent in using the WARN definition of "mass layoff" to establish a linkage between EDWAA programs and WARN and to set forth a minimum threshold for the provision of State rapid response services. DOL recognizes that there is some validity to the comments and does not want to unnecessarily constrain the States in providing rapid response services, but has made no change to this section in the final rule so as to preserve some consistency among States in terms of both eligibility and rapid response. Rather, DOL has made a change in § 631.30(b) of the final rule to permit Governors to establish a lower numerical threshold in "exceptional circumstances" for purposes of providing rapid response.

Participant Eligibility

Section 631.3 sets forth participant eligibility criteria for title III, including regulations required by section 301(a)(1)(D) of the Act, regarding economic conditions and natural disasters under which self-employed individuals are eligible for employment and training assistance. Certain sections of the pre-October 24, 1988, regulations, which provided guidance on the eligibility of self-employed individuals were eliminated in the interim final rule in order to shorten and simplify these regulations.

This section also indicates that services will be provided to displaced homemakers under title III only if the Governor determines that the services may be provided without adversely affecting the delivery of services to eligible dislocated workers. Services provided to displaced homemakers should be part of ongoing programs and activities authorized under title III and not separate and discrete programs.

Section 631.3 also sets forth the eligibility criteria for workers issued a certificate of continuing eligibility and the conditions of eligibility for dislocated workers not issued such certificates.

Ten commenters submitted comments on the eligibility provisions for dislocated workers. In general, these comments dealt with the eligibility criteria for self-employed, requests for clarification of terms, and the eligibility of displaced homemakers for services under title III. One question was raised regarding whether farm and ranch hands, who were regular employees but exempt from unemployment compensation coverage, were meant to be excluded from title III eligibility.

With regard to the eligibility criteria for self-employed individuals, the regulations at § 631.3(d) provide that the Governor is authorized to establish procedures to determine the eligibility of self-employed individuals. This would include necessary definitions, interpretations or guidelines deemed appropriate by the Governor consistent with the provisions of § 627.1 of this chapter. No change has been made in the final rule. However, DOL does not feel that farm and ranch hands were meant to be excluded from title III eligibility. Accordingly, the final rule is changed to include farm and ranch hands at § 631.3(d)(3) based upon requirements established by the Governor.

With respect to the comments provided on the eligibility of displaced homemakers for services, and particularly what would constitute "adverse affect" in determining whether services would be provided to such individuals, DOL's position is that the Act clearly places this responsibility with the Governor and that it would be inappropriate for DOL to provide guidelines or procedures for doing so which reflected the variety of circumstances among the States. This topic is further addressed in the discussion of § 631.41. No change has been made to the final rule.

In addition, one commenter noted that clarification was needed with regard to the criteria established at section 301(a)(1)(A) of the Act regarding "eligible for or have exhausted their entitlement to unemployment compensation." DOL recognizes that, at any time, only a limited number of individuals are eligible for unemployment compensation and does not wish to unduly restrict the eligibility of workers for EDWAA services. Accordingly, a change has been made in the final rule § 631.3 to indicate that "eligible for" unemployment compensation for purposes of eligibility for EDWAA services includes any individual whose wages would be considered in determining eligibility for unemployment compensation under Federal or State unemployment compensation laws.

Reallotment of Funds by the Secretary

Section 631.12 provides for reallotment of unexpended funds. The revised title III provides that the limitation on carryover of funds shall apply to the program year beginning July 1, 1988, but for that year only the amount available for reallotment is the amount equal to the amount by which the unexpended balance of the State formula allotment at the end of the program year exceeds 30 percent of the formula allotment. Thereafter, the amount will be the amount which exceeds 20 percent.

Ten commenters submitted comments in the areas of how funds determined for reallotment would be recaptured and how reallotment of funds would be accomplished. One commenter suggested that the regulations clarify that any reallotment would be achieved through a reduction in the next year's allotment, with no funds actually being taken away from the States. As DOL has indicated in training State personnel on the provisions of the EDWAA interim final rule, recapture and reallotment of title III funds would be accomplished through an adjustment to the Notice of Obligation (NOO) for current program

year funds. A change has been made in § 631.12(c) of the final rule to clarify that this is how reallotment is to be accomplished.

Classification of Costs at State and Substate Levels

Section 631.13 of the interim final rule provided that for the new title III program, all costs shall be charged against one of the allowable cost categories. These categories apply only to the title III program which becomes effective on July 1, 1989. In the rapid response category, staff-related costs are chargeable only to the extent that staff are engaged in rapid response activities; all other costs charged to this category must be solely for rapid response activities. This section also describes activities chargeable to administration.

Ten commenters expressed concern with the expansion of the number of cost categories from three under the basic JTPA program to six under the new title III. In addition, it was noted that the provision at § 631.13(g) that "all activities conducted to coordinate and exchange information" be classified as administration was unduly restrictive, and pointed out that some costs to coordinate services to participants should not be classified as administration.

To a certain extent, the Department agrees that the increased number of cost categories will mean that some adjustment will be needed in accounting for funds under the Act. However, EDWAA essentially established the cost categories by indicating how such costs would be charged and the limitations that applied to such activities. Upon review, DOL has determined that an adjustment can be made to the number of cost categories, consistent with the Act, by combining the cost categories for needs-related payments and supportive services into one category since they are under the same combined 25-percent limitation. The final rule changes § 631.13 to combine needs-related payments and supportive services into one cost category.

DOL agrees that the inclusion of the word "all" with respect to the charging of the costs of coordination to administration is unduly restrictive. The final rule changes § 631.13 to delete "all" and clarify the costs of coordination that are appropriately chargeable to administration. In doing so, DOL recognizes that a distinction may be made between "administrative" coordination, and "program" coordination which has a direct and immediate effect on participants.

Limitations on Certain Costs

Section 631.14 describes cost limitations applicable to title III. The Governor is required to prescribe criteria under which substate grantees may apply for a waiver to expend less than 50 percent (but not less than 30 percent) of substate funds for training.

Note that the provisions of paragraphs (a) through (f) of § 629.39 have been revised to delete all references to title III.

Seventeen comments were received on the provisions of this section. Six of the commenters recommended that the cost limitations be applied to allotments as opposed to expenditures in order to be consistent with other titles of JTPA. In addition, one commenter indicated that the regulations should clarify, as had been indicated in DOL training, that the 15-percent limitation on administration was applied to all expenditures first and that the other limitations were then applied to remaining program expenditures. Other comments addressed a variety of disparate issues regarding the cost limitations including the use of "40-percent" funds, charging of administrative costs and the "50-percent" requirement for retraining.

The requirement that the cost limitations be applied against expenditures is a statutory requirement found in EDWAA at section 315 and cannot be changed by DOL without statutory revision. No change is made in the final rule.

Regarding the method for the application of the limitation on administration and other activities, DOL has reviewed the proposed methodology for calculating expenditures given the provisions of section 315 of the Act. DOL attempted to develop a methodology for application of the cost limitations that simplified the manner in which the costs were computed against the limitations as described above and that would have the effect of marginally increasing the amount of funds available to substate grantees for basic readjustment services. The proposed methodology was presented in the training for State personnel. Based upon further review of the statute and consultations among various offices within the Department, DOL has determined that the methodology presented in the State training did not conform to the statutory provisions and that the best interpretation of the statutory provisions is that the cost limitations apply to the total expenditure of title III funds as set forth in the interim rule, and not as presented in the training sessions. DOL notes that the statute accords the Governor the authority to waive a portion of the limitation on expenditures for retraining and that an effect of such a waiver would be to increase funds available for necessary basic readjustment services. Accordingly, no substantive change has been made to § 631.14 in the final rule; however, for simplification, the limitations which apply to both the State and the substate grantee were combined.

Finally, DOL has added a paragraph in the final rule to reflect the changes made at § 629.39 and discussed at that section above.

Federal Reporting Requirements

Section 631.15 describes reporting requirements applicable to title III. See also § 629.36. In order to comply with new statutory requirements regarding federal oversight and mandatory reallotment, quarterly financial reporting will be required for the first two program years (*i.e.*, PY 1989 and PY 1990). More frequent data collection will result in a reduced need for actual reallotment in the initial years of the program.

A total of nine comments were received on the provisions of this section. The comments expressed concern in two areas, the number and frequency of reports required and a requirement proposed in DOL training of State personnel that reports be submitted 30 days following the reporting period. Upon review, DOL has determined that some adjustment is warranted in this section. Accordingly, the final rule retains the 45-day time period for submission of reports, and indicates that while financial reports are to be submitted on a quarterly basis, program reports on characteristics of and outcomes for participants shall be submitted annually for the first two program years (*i.e.*, PY 1989 and PY 1990). The final rule at § 631.15 also indicates that, after the first two program years, the schedule and frequency of reports required for title III programs shall be determined by the Secretary, but in no case will such reports be required more frequently than quarterly.

Needs-Related Payments

Section 631.20 both provides eligibility criteria for and establishes maximum weekly amounts for needs-related payments. Eligibility criteria address both workers who qualify for unemployment insurance and workers who do not quality. Needs-related payments will be made only in accordance with the State or substate

plan and within cost limitations established at § 631.14.

Twenty-one comments were received on the provisions of this section. In general, they fell within three areas, namely, whether needs-related payments are required to be paid, the requirement that a participant be enrolled in training by the thirteenth week of the participant's initial unemployment compensation benefit period, and that needs-related payments should be permitted while a participant is receiving services other than retraining services.

The requirement that the receipt needs-related payments be conditioned upon enrollment in training and by the thirteenth week of the initial unemployment compensation benefit period is a statutory requirement, found at section 314(e) of the Act, which DOL has no authority to change. No change is being made to this provision in the final rule.

DOL agrees that the interim final rule appears to mandate that needs-related payments be made. The intent of the provisions of § 631.20 was to indicate that when needs-related payments are provided that they must be provided in accordance with the provisions of the approved substate plan. DOL is providing clarification in the final rule that funds "may" be used to provide needs-related payments, and that when such payments are provided, they must be consistent with a substate approved plan.

Rapid Response Capability

Section 631.30(b) of the interim final rule indicated that rapid response was a major element among the State's responsibilities under EDWAA so that there will be a central point of contact within the State; and that there will be a capability to respond immediately to dislocations, such as permanent closures and substantial layoffs, throughout the State.

An important responsibility under the State's rapid response capability is the development and maintenance of contacts with employee groups, including organized labor, and the employer community, particularly employers in industries or locations which may be vulnerable to employment loss. Close liaison with employee groups, including organized labor, employer organizations, chambers of commerce, State and local economic development agencies, private industry councils, veterans' service organizations and related organizations is essential.

In instances in which a dislocation event occurs, the office must have the capability to quickly approach the affected employer and workers and offer initial services, including assistance in the establishment of labor-management committees.

It is essential that among the staff of such an office, there be individuals with experience and credibility in the employer and employee communities who can effectively work with employers and employees in difficult situations.

A total of twenty-two comments were received on the provisions of this section. Eighteen commenters recommended that organized labor, including the State AFL–CIO, have a specific role with regard to the State's rapid response capability, from development of strategies to staffing. Two commenters suggested that the section clarify that rapid response could be contracted out by the State.

While DOL recognizes that organized labor has an important role to play in EDWAA generally and with respect to rapid response in particular, the provisions of EDWAA place the responsibility for the implementation of the State's rapid response capability with the Governor.

However, DOL agrees that some adjustment in the final rule is warranted to reflect the important role of organized labor as noted above. Accordingly, the final rule amends § 631.30 to indicate that rapid response specialists should be knowledgeable of collective bargaining activities, that they should have credibility with employee groups, including organized labor, and that information on the dislocated worker unit's (DWU's) services and activities should be disseminated to organized labor. In addition, the final rule at § 631.30(a)(9) provides for full consultation with labor organizations consistent with the provisions of section 311(b)(7) of the Act.

At section 314(b), EDWAA provides that rapid response is a State responsibility and that the State shall have rapid response specialists. DOL recognizes that there are a variety of acceptable means through which the States may choose to meet this responsibility, but, as the Conference Report (H.R. Rep. No. 100–576; see OTCA sec. 2) indicates, rapid response is not to be delegated by the State. It should be clear, that however the State chooses to meet the EDWAA rapid response requirements, the State is responsible. Further, since rapid response is not a substate activity, the substate grantees may not charge expenditures to the rapid response cost category.

As indicated in the above discussion of § 631.2 of the final rule, DOL has made a change in the final rule to provide that the Governor may, under "exceptional circumstances", specify a lower threshold for rapid response to "substantial layoffs" as defined at § 631.2. "Exceptional circumstances" include those situations in which layoffs or permanent closures would have a major impact upon the community(ies) in which they occur.

Finally, DOL has made a change in the final rule with respect to the provisions regarding rapid response specialists to more accurately reflect the statute. This change is to indicate that, while the State shall have one or more rapid response specialists, the rapid response specialists "should" have certain knowledge and abilities rather than that they "shall" have them.

Designation of Substate Grantees

Section 631.35 provides for designation of substate grantees. Substate grantees will be selected through negotiations among the Governor, the private industry council (PIC), and the local elected official. The regulations provide that when a substate area is represented by more than one elected official or PIC, they shall designate representatives who shall negotiate together with the Governor an agreement on designation of substate grantees. If, and only if, an agreement cannot be reached, the Governor will select the substate grantee. Decisions made on the designation of substate grantees are not matters appealable to the Secretary, in the same way that decisions on the designation of SDA grant recipients and administrative entities are not appealable to the Secretary of Labor.

A total of sixteen comments were received on the provisions of this section. Four commenters indicated that the term "private nonprofit organization" be expanded to specifically include labor organizations. The types of entities that may be designated as substate grantees are taken directly from the Act. DOL believes that it would be inappropriate to list one particular organization to the exclusion of other organizations which could be included in that category. No change has been made to this section in the final rule.

Four commenters indicated that the provisions of this section in the interim final rule appeared to require that the Governor establish procedures for designation of substate grantees within the State and then be required to agree to another set of procedures at the substate level. DOL intended that the Governor have the authority to establish

procedures for the designation of substate grantees, and further that there be a record of the designation process at the substate level, to which the Governor is a party, in the event that the selection is disputed. A change in the final rule has been made to delete "procedures" from paragraph (d) of this section to clarify that the Governor needn't agree to a second set of procedures.

Coordination Activities

Section 631.37 describes the types of agencies and organizations with which the dislocated worker unit or office is to exchange information and coordinate programs, activities and services. Coordination and effective use of information and services between programs is essential to effective and successful program administration.

In addition to the provisions of this section as set forth in the interim final rule, and pursuant to the provisions of section 402 of the Veterans' Benefits and Programs Improvement Act of 1988 (Pub. L. 100–689, 102 Stat. 4161), 29 U.S.C. 1721 note, a paragraph (e) has been added to § 631.37 in the final rule to indicate that title III programs will be coordinated with various programs designed to serve veterans. See, *e.g.*, 20 CFR part 635.

Allowable State Activities

Section 631.41 describes activities and services upon which funds reserved by the Governor may be expended.

A total of twenty-four comments were received on the provisions of this section, generally falling into one or more of four categories. One group took exception to the language in paragraph (f) of the interim final rule concerning the "mainstreaming" of services to displaced homemakers, recommending that this paragraph be altered or deleted. Also, comments were received expressing concern that the language in the interim final rule precluded displaced homemaker program operators from being selected as title III service providers. A second group of commenters recommended that the language regarding demand occupations in the area should read "shall" instead of "should" to more accurately reflect the statutory provisions. A third group recommended that the provisions of section 107(d) of the Act which are incorporated by reference in paragraph (g) of this section regarding PIC competencies be deleted since this provision is not appropriate for the selection of service providers under title III. A fourth group requested clarification of paragraph (a)(6) regarding the use of 40-percent funds for Title III incentive grants.

The requirement that displaced homemakers be served as a part of ongoing programs derives from legislative history in the Conference Report (H.R. Rep. No. 100–576; see OTCA sec. 2), which indicated that services to displaced homemakers be part of ongoing programs and activities authorized under title III and not separate and discrete programs. However, this provision was not intended to preclude displaced homemaker programs from being service providers under title III so long as such programs provide services to all eligible dislocated workers and not just displaced homemakers. No change has been made in the final rule.

DOL has conformed the regulatory language to the statutory provisions of section 141(d) of the Act regarding training in occupations in demand. Accordingly, the term "should" in paragraph (e) is changed to read "shall" in the final rule.

DOL agrees that it is inappropriate to apply local PIC standards to the selection of service providers at the State level. In its review of this section, DOL also noted that it is inappropriate to apply the provisions of section 107(c) regarding the use of local education agencies to the selection of service providers at the State level. The final rule is changed to indicate in § 631.41(g) that, in selecting service providers at the State level, only subsections (a) and (b) of section 107 of the Act apply.

The provision at § 631.41(a)(6) was intended to indicate that States may use 40-percent funds to provide incentives for training of greater duration consistent with the provisions of JTPA section 311(a). DOL also notes that the incentives described at section 311(a) can be nonfinancial in nature. The provision of financial incentives from the 40-percent funds is at the discretion of the State; however, where such are used for incentives they are subject to the cost limitations that apply to other title III funds received by substate grantees.

Allowable Substate Program Activities

Section 631.51 describes activities and services upon which funds allocated to a substate area may be expended.

A total of 14 comments were received on this section. The majority of the comments pertained to one area, the provisions of paragraph (c) of this section concerning training in demand occupations in the area. Commenters indicated that the term "should" in paragraph (c) should read "shall" to conform to the provisions of section 141(d) of the Act. DOL agrees that the regulatory language should conform to the statute and the term "should" in paragraph (c) is changed to read "shall" in the final rule.

Selection of Service Providers

Section 631.52 indicates that the substate grantee has the responsibility for providing authorized title III services within the substate area, pursuant to the approved plan. The substate grantee may provide such services directly or may select service providers to do so.

A total of fifteen comments were received on the provisions of this section. The comments received generally fell into two groups. One group recommended that the provisions of this section be changed to provide a presumptive role for labor organizations and joint labor-management entities as title III service deliverers. The second group recommended that the provisions of paragraph (c) of this section pertaining to program services to displaced homemakers be deleted, and that displaced homemaker program operators not be precluded from being title III service providers.

Section 312(d) of EDWAA indicates that the substate grantee is responsible for the delivery of services in the substate area including the selection of service providers, as appropriate. Given that this is a local decision, based upon local circumstances, assigned by the statute, it is inappropriate for DOL to specify any particular service providers within the regulations. No change has been made in the final rule.

Issues regarding services to displaced homemakers, including the selection of displaced homemakers program operators as service providers, have been discussed in the section of this preamble entitled "Allowable State Activities." No change has been made to this section in the final rule.

In DOL's review of this section in light of the comments received regarding section 107 of the Act in the context of allowable State activities at § 631.41, a change is made in the final rule to paragraph (d) to indicate that only subsections (a), (b), and (c) of section 107 apply to the selection of service providers at the substate grantee level under title III.

Certificates of Continuing Eligibility

Section 631.53 provides for alternative methods by which substate grantees may provide retraining services through issuance of certificates of continuing eligibility. Such certificates are effective for the period specified in the certificate, not to exceed 104 weeks. It is envisioned that certificates of continuing eligibility may be used in two distinct ways. First,

workers may receive a certificate and defer the beginning of retraining services. This will be particularly useful where dislocated workers opt for immediate employment and defer a decision on retraining. Second, workers may use a certificate to obtain their own retraining services through alternative service providers approved by the substate grantee.

Eligibility for dislocated workers not issued such certificates is covered in § 631.3.

A total of sixteen comments were received on the provisions of this section. The comments fell into three groups. One group indicated that the regulations should provide clarification regarding certificates in the areas of effective dates, eligibility and documentation, tracking certificates, and the term "non-transferrable" in the absence of residency requirements for title III. A second group indicated that the regulations should indicate that the State may issue certificates. The third group pointed out that the 45-day enrollment provisions of § 629.1(d) should be waived for individuals who have been issued a certificate.

The regulations at this section reflect the provisions of the Act. Questions regarding the administration of the certificates (*e.g.*, the duration of certificates, and whether certificates should be issued), are matters to be decided at the substate grantee level within the context of the statutory and regulatory provisions. However, DOL would point out that certificates are effective on the date they are issued. No change has been made in the final rule.

DOL's interpretation is that the statute, at section 316 (a) and (b), clearly indicates that only substate grantees, and not States, may issue certificates as an alternative method of providing retraining services under the provisions of JTPA section 314(d). No change is made in the final rule.

DOL agrees that, in cases where an individual has been issued a certificate, the 45-day enrollment requirement at § 629.1(d) does not apply. Accordingly, as noted in the discussion of § 629.1 and § 631.3, the final rule has been changed to waive the 45-day requirement for certificate holders.

Transition Provisions

The transition provisions included in EDWAA at section 6305(b) direct the Secretary of Labor and the Governors, during the program year (PY) beginning July 1, 1988 (July 1, 1988–June 30, 1989), to continue to administer title III in the same manner as it had been administered in prior program years, except to the extent necessary to provide for the orderly transition to and implementation of the amendments. The transition provisions also state that funds appropriated for Fiscal Year 1989 and earlier may be used to carry out appropriate transition and implementation activities.

The interim final regulations published on October 24, 1988, contained two provisions relating to transition: Section 631.1(b), which stated that for all funds appropriated before Fiscal Year 1989, the regulations published in the **Federal Register** on February 12, 1988 (and in title 20, CFR (1988 ed.)), would continue to apply; and § 631.70(a) which allowed the use of a limited amount of funds allotted for PY 1988 to assist in implementing the new provisions.

A total of 21 comments were received on the transition provisions in the interim final regulations, generally falling into one or more of four groups. One group expressed concern that the provisions would require continued operation of existing programs in PY 1989 at the same time as implementation of the new programs. A second group felt that the restrictions on allowable transition activities would not allow the implementation of rapid response activities during PY 1988. A third group felt that the restriction on purchase of computer equipment as a transition cost during PY 1988 was unreasonable. The fourth group indicated that transition activities should be expanded to include activities in PY 1989.

The Department agrees that continued operation of existing programs in PY 1989 will reduce the opportunity to focus efforts on the implementation of EDWAA. Nonetheless, in recognition of existing contractual obligations and the need to avoid disruption in service to participants, the Department must allow the States some flexibility in the use of PY 1988 and earlier funds that may be carried over into PY 1989. Therefore, in the final rule, the Department has modified the provisions at § 631.1(b) to delete the absolute requirement that all pre-PY 1989 funds must be administered pursuant to the February 12, 1988 (i.e. 20 CFR (1988 ed.)), JTPA regulations. Further, the provisions at § 631.70(a) will now specifically require that the amount of funds unexpended as of June 30, 1989, that are subject to reallotment be made available for EDWAA programs in PY 1989, while allowing Governors the opportunity to use other carryforward funds that are not subject to reallotment for EDWAA, to the extent that existing contractual obligations and services to participants are not compromised. PY 1988 and earlier funds that are made available for EDWAA programs under these provisions will be subject to the EDWAA regulations below, including the distribution requirements, and will be exempted from continued accountability under the February 12, 1988, JTPA regulations.

The Department also agrees that delaying the provision of rapid response assistance until PY 1989 may not be in the best long-term interests of the program, especially since States may be receiving WARN Act and other advance notification of worker dislocations prior to July 1, 1989. Therefore, in the final rule § 631.70(a) has been revised to include the provision of rapid response assistance as an allowable transition activity which can be funded out of the PY 1988 and earlier allotments during the balance of PY 1988.

The Department does not agree that the restriction on the purchase of equipment or computer hardware with transition funds is inappropriate. The restriction at § 631.70(a) applies only to the use of transition funds, and in no way limits the opportunity to make such equipment purchases within the context of the ongoing program and the policies and restrictions that normally apply. Conversely, the use of transition funds for such procurements would circumvent the clear intent of JTPA to limit administrative expenditures, and would have a negative impact on the funds available for the planning and implementation of the EDWAA amendments. Therefore, there has been no change in the final rule with regard to this provision.

The Department agrees that full implementation of EDWAA may not be concluded by the time PY 1989 begins. Changes to § 631.70(a) identified above, with regard to the use of PY 1987 and PY 1988 funds for EDWAA programs in PY 1989, will reduce some of the problems of fund availability noted by the commenters seeking a longer transition period. However, the issue of continued transition activity as opposed to regular program activity in PY 1989 is viewed by the Department as inconsistent with the letter and the spirit of the EDWAA amendments, which are to be effective for program years beginning on or after July 1, 1989. Planning and program implementation are the responsibility of the State and substate grantees under EDWAA and, as such, should be conducted as part of the regular EDWAA program after July 1, 1989. Therefore, there has been no change in the final rule with regard to this provision.

Regulatory Impact

The final rule implements certain provisions of the Economic Dislocation and Worker Adjustment Assistance Act. As it would not have the financial or other impact to make it a major rule, preparation of a regulatory impact analysis is unnecessary. See Executive Order No. 12291, 5 U.S.C. 601 note.

At the time the interim final rule was published, the Department of Labor certified to the Chief Counsel for Advocacy, Small Business Administration, that pursuant to 5 U.S.C. 605(b), the rule would not have a significant economic impact on a substantial number of small entities. No significant economic impact would be imposed by the rule.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act, all information collection requirements imposed by these regulations have been approved by the Office of Management and Budget.

Catalog of Federal Domestic Assistance Numbers

These programs are listed in the *Catalog of Federal Domestic Assistance* at No. 17–246, "Employment and Training Assistance—Dislocated Workers" (JTPA Title III, Programs); and No. 17–250, "Job Training Partnership Act (JTPA)" (JTPA Titles I and II, Programs).

List of Subjects in 20 CFR Parts 626, 627, 628, 629, and 631

Grant programs, Labor, Manpower training programs, Dislocated worker programs.

Final Rule

Accordingly, chapter V of title 20, Code of Federal Regulations is amended, as follows:

1. Part 626 is revised to read as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100–418, 102 Stat. 1107.

§ 626.1 Scope and purpose of the Act.

It is the purpose of the Act to:

(a) Establish programs to prepare youth and unskilled adults for entry into the labor force; and

(b) Afford job training to those economically disadvantaged individuals and others facing serious barriers to employment who are in special need of such training to obtain productive employment (section 2).

§ 626.2 Format of these regulations.

(a) Regulations promulgated by the Department of Labor to implement the provisions of the Act are set forth in parts 626 through 638 of title 20 of the Code of Federal Regulations, with the exception of Jobs Corps regulations, which are set forth in part 684 of title 20.

(b) Nondiscrimination and equal opportunity requirements and procedures, including complaint processing and compliance reviews, will be governed by the provisions of 29 CFR parts 31 and 32 and will be administered by the DOL Directorate of Civil Rights.

(c) General authority for the regulations is found at section 169 of the Act. Specific statutory authorities other than section 169 are noted throughout the regulations.

§ 626.3 Table of contents for the regulations under the Job Training Partnership Act.

The table of contents for the regulations under the Job Training Partnership Act, parts 626–638 and 684, is as follows:

PART 626—INTRODUCTION TO THE REGULATIONS UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

PART 627—STATE RESPONSIBILITIES UNDER THE JOB TRAINING PARTNERSHIP ACT

Subpart A—State Planning Procedures

Sec.

Subpart B—Statewide Programs

PART 628—SERVICE DELIVERY AREAS DESIGNATED UNDER THE JOB TRAINING PARTNERSHIP ACT

Sec.

PART 629—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Program Design Requirements

Sec.

Subpart B—Payments, Benefits and Working Conditions

Subpart C—Administrative Standards and Procedures

Subpart D—Grievances, Investigations and Hearings

PART 630—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Subpart B—Additional Title III Administrative Standards and Procedures

Subpart C—Needs-Related Payments

Subpart D—State Administration

Subpart E—State Programs

Subpart F—Substate Programs

Subpart G—Federal Delivery of Dislocated Worker Services

Subpart H—Transition Provisions

PART 632—INDIAN AND NATIVE AMERICAN EMPLOYMENT AND TRAINING PROGRAMS

Subpart A—Introduction

Subpart B—Designation Procedures for the Native American Grantees

Subpart C—Program Planning, Application and Modification Procedures

Subpart D—Administrative Standards and Procedures

Subpart E—Program Design and Management

Subpart F—Prevention of Fraud and Program Abuse

Subpart G—[Reserved]

Subpart H—Job Training Partnership Act Programs Under Title IV, Section 401

Supbart I—Summer Youth Employment and Training Programs

PART 633—MIGRANT AND SEASONAL FARMWORKER PROGRAMS

Subpart A—Introductory Provisions

Subpart B—Grant Planning and Application Procedures

§ 626.4 Definitions.

In addition to the definitions contained in section 4 of the Act, the following definitions apply as appropriate to programs under titles I, II, and III of the Act.

Family shall be defined by the Governor. An adult handicapped individual shall be considered a family of one when applying for programs under the Act (section 4(8)).

Family income shall be defined by the Governor, consistent with the definition of family income for other State administered needs-based programs.

Participant means any individual who has (a) been determined eligible for participation upon intake; and (b) started receiving employment, training, or services (except post-termination services) funded under the Act following intake. Individuals who receive only outreach and/or intake and initial assessment services or post-program followup are excluded from this definition.

Recipient means the Governor.

SDA grant recipient means the entity that receives JTPA funds for a service delivery area (SDA) directly from the Governor.

Substate grantee means that agency or organization selected to administer programs pursuant to section 312(b) of the Act. The substate grantee is the entity that receives title III funds for a substate area directly from the Governor.

Secretary means the Secretary of Labor or the Secretary's designated representative(s).

Subrecipient means any person, organization or other entity which receives JTPA funds either directly or indirectly from the Governor. Depending on local circumstances, the Private Industry Council (PIC), local elected official, or administrative entity may be a subrecipient. SDA grant recipients and title III substate grantees are particular types of subrecipients.

2. Part 627 is revised to read as follows:

PART 627—STATE RESPONSIBILITIES UNDER THE JOB TRAINING PARTNERSHIP ACT

Subpart A—State Planning Procedures

Subpart B—Statewide Programs

Authority: 29 U.S.C. 1579(a); Sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107.

Subpart A—State Planning Procedures

§ 627.1 Eligible grant recipients.

To establish a continuing relationship under the Act, the Governor and the Secretary shall sign a Governor/Secretary Agreement. The agreement shall consist of a statement assuring that the State shall comply with (a) the Job Training Partnership Act, as amended, and the applicable rules and regulations and (b) the Wagner-Peyser Act, as amended, and all applicable rules and regulations. The agreement shall specify that guidelines, interpretations and definitions adopted by the Governor shall, to the extent that they are consistent with the Act and applicable rules and regulations, be accepted by the Secretary.

§ 627.2 Governor's coordination and special services plan.

(a) *Submittal.* By a date established by the Secretary, any State seeking financial assistance under the Act shall submit to the Secretary a Governor's coordination and special services plan (section 121(a)(2)).

(b) *Plan review.* The Secretary shall review the plan for overall compliance with the provisions of the Act. If the plan is disapproved, the Secretary shall notify the Governor in writing within 30 days of submission of the reasons for disapproval so that the Governor may modify the plan to bring it into compliance with the Act (section 121(d)).

(Approved by the Office of Management and Budget under control number 1205-0203)

§ 627.3 Funding.

The Secretary will allot funds to the States in accordance with sections 162 and 302 of the Act. The Secretary will obligate such allotments through a Notice of Obligation.

§ 627.4 State job training coordinating council.

(a) The Governor shall appoint a State job training coordinating council (SJTCC) pursuant to section 122 of the Act.

(b) Consistent with section 122(a)(3) of the Act, the SJTCC shall be composed of 30 percent business and industry representatives, 30 percent State and local government and local education agency representatives, 30 percent organized labor and community-based organization representatives, and 10 percent representation from the general public. The SJTCC shall have specific functions and responsibilities outlined in sections 122, 317, and 501 of the Act.

§ 627.5 Interstate agreements.

The Secretary hereby grants authority to the several States to enter into interstate agreements and compacts in accordance with section 127 of the Act.

Subpart B—Statewide Programs

§ 627.21 Distribution of State funds.

(a) The funds made available to the Governor under section 202(b) of the Act shall be used to carry out activities and services in this subpart.

(b) Funds provided to the Governor under section 202(b)(4) of the Act may be used to conduct auditing activities, administrative activities, and other activities described in sections 121 and 122 of the Act (section 202(b)(4)).

§ 627.22 State education coordination and grants.

(a) Expenditures for programs pursuant to section 123(c)(2)(B) of the Act shall be subject to § 629.39(a) of this chapter.

(b) Not less than 75 percent of the funds shall be expended for activities for economically disadvantaged individuals (section 123(c)(3)).

§ 627.23 Training programs for older individuals.

(a) Expenditures for administration and participant support services for programs pursuant to section 124 of the Act shall be subject to § 629.39 of this chapter.

(b) Recipients should coordinate development and delivery of services under section 124 with community service employment programs for older Americans under title V of this Older Americans Act of 1965, as amended.

§ 627.24 State incentive grants.

(a) Funds available under section 202(b)(3) shall be used by the Governor to provide incentive grants for programs exceeding title II performance standards established pursuant to section 106 of the Act, including incentives for serving hard-to-serve individuals. Incentive grant funds shall be distributed among SDAs within the State exceeding their performance in an equitable proportion based on the degree by which the SDAs exceed their title II performance standards. Incentive grant funds made available to an SDA may be used for post-program data collection activities, subject to the provisions of § 629.39(f) of this chapter (section 202(b)(3)(B)).

(b) Funds available under section 202(b)(3) that are not needed for incentive grants shall be used by the Governor to provide technical assistance to SDAs within the State (or to subrecipients in single statewide SDAs). For the purposes of this section, technical assistance means activities directly related to program performance, including preventative technical assistance to enable the State to anticipate program deficiencies and take corrective action. Subject to the provisions of § 629.39(f) of this chapter, funds available for technical assistance may be retained by the Governor and used for post-program data collection activities. Technical assistance funds shall not be expended to support ongoing maintenance of management information systems or other ongoing operational support activities that should be charged to the overall administration of JTPA title II–A programs (section 106(h)(1)).

3. Part 628 is revised to read as follows:

PART 628—SERVICE DELIVERY AREAS DESIGNATED UNDER THE JOB TRAINING PARTNERSHIP ACT

Authority: 29 U.S.C. 1579(a), sec. 6305(f), Public Law 100–418, 102 Stat. 1107.

§ 628.1 Service delivery areas.

(a) The SJTCC shall make recommendations to the Governor on proposed SDA designations in a form and by a date established by the Governor (section 101(a) (1) and (2)).

(b) Pursuant to section 101 of the Act, the Governor shall designate service delivery areas (SDAs) for the State. All areas within the State must be covered by designated SDAs. Requests for designation shall be submitted in a form and by a date established by the Governor.

(c) Pursuant to section 101(a)(4)(C) of the Act, an entity described in section 101(a)(4)(A) may appeal the Governor's denial of service delivery area designation to the Secretary of Labor.

(1) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor.

(3) The appealing party shall explain why it believes the denial is contrary to the provisions of section 101 of the Act.

(4) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the denial is inconsistent with section 101 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 30 days after this appeal is received (section 101(a)(4)(C)).

(Approved by the Office of Management and Budget under control number 1205–0202)

§ 628.2 Private industry council.

(a) The chief elected official(s) of the SDA shall establish and the Governor shall certify the private industry council (PIC) pursuant to section 102 of the Act.

(b) Pursuant to section 103 of the Act, the PIC shall provide policy and program guidance for all activities under the job training plan for the SDA. In accordance with agreements negotiated with the appropriate chief elected official(s), the PIC shall determine the procedures for development of the job training plan and select the grant recipient and administrative entity for the SDA. The PIC may exercise independent oversight over activities under the job training plan, and oversight shall not be circumscribed by agreements with the appropriate chief elected official(s) of the SDA.

(c) The employment service shall develop jointly with each appropriate PIC and chief elected official(s) for the SDA those components of the plans required under the Wagner-Peyser Act, as amended, applicable to the SDA (Wagner-Peyser Act, section 8(b)(1)).

(d) The PIC shall be a party to the designation of substate grantees under title III, as set forth at § 631.35 of this chapter (section 312(b)).

(e) The PIC shall be provided the opportunity to review and comment on a substate grantee plan under title III of the Act prior to the submission of such plan to the Governor (section 313(a)).

§ 628.3 Selection of SDA grant recipient, administrative entity and service providers.

(a) Pursuant to section 103(b)(1) of the Act, a selection shall be made of the SDA grant recipient and the entity to administer the job training plan for title II developed pursuant to section 104 of the Act. These may be the same or different entities. The specific functions and responsibilities of these entities shall be spelled out in accordance with the agreement(s) between the PIC and the chief elected official(s), which should specifically address the provisions of section 141(i) of the Act.

(b) Service providers shall be selected in accordance with—

(1) The agreement negotiated pursuant to section 103(b)(1) of the Act, and

(2) The provisions of sections 107 and 205(b)(4) of the Act.

§ 628.4 Job training plan.

The Governor may issue instructions and schedules that will assure that job training plans and plan modifications for SDAs within the State conform to all requirements of the Act.

(Approved by the Office of Management and Budget under control number 1205–0208)

§ 628.5 Review and approval.

(a)(1) If the Governor disapproves the SDA job training plan or plan modification, the Governor shall notify the PIC and the appropriate chief elected official(s) for the SDA in writing as provided in section 105(b)(2) of the Act.

(2) The Governor shall provide the PIC and the appropriate chief elected official(s) for the SDA 20 days to correct the deficiencies and resubmit the plan or plan modification. The Governor shall make a final decision and shall notify the PIC and the appropriate chief elected official(s) for the SDA of the final disapproval or approval within 15 days after the plan or plan modification was resubmitted.

(b) Pursuant to section 105(b)(2) of the Act, any final disapproval of the job training plan or plan modification may be appealed to the Secretary.

(1) Appeals to the Secretary shall be submitted jointly by the PIC and the appropriate chief elected official(s) for the SDA to the Secretary, U.S. Department of Labor, Washington, DC 20210 Attention: ASET. A copy of the appeal shall be simultaneously provided to the Governor.

(2) The Secretary shall not accept an appeal dated later than 30 days after receipt of the final disapproval from the Governor.

(3) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the disapproval is clearly erroneous within the context of section 105(b)(1) of the Act. The Secretary may consider any comments submitted by the Governor. In accordance with section 105(b)(2) of the Act, the Secretary shall make a final decision within 45 days after the appeal is received.

(c) Pursuant to section 164(b)(1) of the Act, a notice of intent to revoke approval of all or part of a plan may be appealed to the Secretary. Such appeals shall be subject to the terms and conditions of paragraph (b) of this section, except that the revocation shall not become effective until—

(1) The time for appeal has expired, or

(2) The Secretary has issued a decision.

(Approved by the Office of Management and Budget under control number 1205-0208)

§ 628.6 State SDA submission.

(a) Pursuant to section 105(d) of the Act, when the SDA is the State, the Governor shall, not less that 60 days before the beginning of the first of the two program years covered by the job training plan and in accordance with instructions issued by the Secretary, submit to the Secretary a two-program-year job training plan. When the SDA is the State, modifications to the plan shall be submitted to the Secretary for approval.

(b) The Secretary shall review the plan or plan modification for overall compliance with the provisions of the Act. The State's plan shall be considered approved unless, within 30 days of receipt of the submission described in paragraph (a) of this section, the Secretary notifies the Governor in writing of discrepancies between the submission and specific provisions of the Act. If the plan or plan modification is disapproved, the Governor may appeal the decision by requesting a hearing before an administrative law judge pursuant to § 629.57(c) of this chapter.

(Approved by the Office of Management and Budget under control number 1205-0204)

4. Part 629 is revised to read as follows:

PART 629—GENERAL PROVISIONS GOVERNING PROGRAMS UNDER TITLES I, II, AND III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—Program Design Requirements

Subpart B—Payments, Benefits and Working Conditions

Subpart C—Administrative Standards and Procedures

Subpart D—Grievances, Investigations and Hearings

Authority: 29 U.S.C. 1579(a); sec. 6305(f); Pub. L. 100-418, 102 Stat. 1107.

Subpart A—Program Design Requirements

§ 629.1 General program requirements.

(a) The conditions prescribed in sections 141, 142 and 143 of the Act apply to all programs under titles I, II, and III of the Act, except as provided elsewhere in the Act of this chapter.

(b) Programs operated under titles I, II, and III of the Act are subject to the provisions of 29 CFR part 96, which implement the Single Audit Act of 1984, except as provided elsewhere in this chapter.

(c) Recipients shall ensure that an individual enrolled in a JTPA program meets the requirements of section 167(a)(5) of the Act, section 3 of the Military Selective Service Act (50 U.S.C. App. 453) and other requirements applicable to program funded under the specific section or title of the Act under which the participant is enrolling (section 504).

(d) Recipients shall ensure that individuals are enrolled within 45 days of the date of application or a new application must be taken, except the eligible summer program applicants under title II-B may be enrolled within 45 days into a summer youth enrollee pool, and no subsequent application need be taken prior to participation. In addition, the 45-day enrollment requirement shall be waived for individuals who have been issued a certificate of continuing eligibility pursuant to the provisions of § 631.53 of this chapter, and no subsequent application need be taken prior to participation.

(e) Programs operated under titles I, II, and III of the Act are not subject to the provisions of 29 CFR part 97, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," except as otherwise explicitly provided in this chapter.

§ 629.2 Public service employment prohibition.

No funds available under titles I, II-A, or III of the Act may be used for public service employment (sections 141(p) and 314(d)(2)).

§ 629.3 Nondiscrimination and nonsectarian activities.

(a) Recipients, SDA grant recipients, title III substate grantees and other subrecipients shall comply with the nondiscrimination provisions of section 167 of the Act.

(b) Pursuant to section 167(a) of the Act, the employment or training of participants in sectarian activities is prohibited.

§ 629.4 Relocation and displacement.

(a) No funds may be used to assist in relocating establishments, or parts thereof, from one area to another unless a determination is made that such relocation will not result in an increase in unemployment in the area of original location or in any other area (section 141(c)).

(b) No currently employed worker shall be displaced (including partial displacement) by any participant.

(c) No participant shall be employed or job opening filled—

(1) When any other individual is on layoff from the same or any substantially equivalent job, or

(2) When an employer has terminated any regular employee or otherwise reduced its workforce with the intention of filling the vacancy so created by hiring a participant whose wages are subsidized by this Act (section 143(b)).

(d) The Secretary will promptly review and take appropriate action with regard to alleged violations of the provisions of paragraphs (a), (b), and (c) of this section, by either direct investigation or referral to the State for action as provided for at § 629.54(b) of this part.

Subpart B—Payments, Benefits and Working Conditions

§ 629.21 Needs-based payments.

(a) Subject to the provisions of sections 108 and 142(a)(1) of the Act and in accordance with a locally developed formula or procedure, payments based on need may be provided to individual participants under title II in cases where such payments are necessary to enable individuals to participate in a training program funded under the Act (section 204(27)).

(b) Documentation supporting the locally developed formula or procedure for needs-based payments shall be maintained in accordance with instructions from the Governor (section 204(27)).

(c) The formula or procedure shall provide for the maintenance of an individual record of the determination of the need for, and the amount of, any participant's needs-based payment.

§ 629.22 Benefits and working conditions.

(a) Where participants are not covered under a State's workers' compensation law, they shall be provided with adequate on-site medical and accident insurance. Income maintenance coverage is not required for these participants (section 143(a)(3)).

(b) Where participants are engaged in activities not covered under the Occupational Safety and Health Act of 1970, they shall not be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to the participants' health or safety. Participants employed or trained for inherently dangerous occupations, *e.g.*, fire or police jobs, shall be assigned to work in accordance with reasonable safety practices (section 143(a)(2)).

Subpart C—Administrative Standards and Procedures

§ 629.31 Grant payments.

(a) JTPA grant payments will be made to the Governor in accordance with section 203 of the Intergovernmental Cooperation Act (42 U.S.C. 4213) and Treasury Circular No. 1075 (31 CFR part 205).

(b) The Governor shall establish procedures that will minimize the time elapsing between the receipt of advanced funds and disbursement. Failure to establish such procedures or to take action to correct deficiencies in—

(1) Financial management systems, or

(2) Fund drawdown and advance payment procedures may result in the Governor being funded through reimbursement by Treasury check payment.

§ 629.32 Program income.

Income generated under any program shall be used to further program objectives and may be retained by that program, unless the Governor requires that such income be turned over to the State. Program income generated under title II may be used to satisfy the matching requirement of section 123(b) of the Act.

§ 629.33 Insurance.

(a) *General.* Each Governor, SDA grant recipient, Title III substate grantee and subrecipient shall follow its normal insurance procedures except as otherwise indicated in this section.

(b) The DOL assumes no liability with respect to bodily injury, illness or any other damages or losses, or with respect to any claims arising out of any activity under a JTPA grant or agreement whether concerning persons or property in the Governor's, SDA grant recipient's, title III substate grantee's or other subrecipient's organization or any third party.

(c) Governors, SDA grant recipients, title III substate grantees and subrecipients shall secure insurance coverage for injuries suffered by participants who are not covered by existing workers' compensation. Contributions to a reserve for a self-insurance program, to the extent that the type and extent of coverage and the rates and premiums would have been allowed had insurance been purchased to cover the risks, are allowable and are chargeable to participant support or training for title II, and to basic readjustment services, retraining services, or needs-related payments and supportive services for title III, as appropriate (section 143(a)(3)).

§ 629.34 Procurement.

Subject to the provisions of section 107 of the Act, recipients and subrecipients shall administer procurement systems that reflect applicable State and local law, rules, and regulations as determined by the Governor.

§ 629.35 Management systems, reporting and recordkeeping.

(a) The Governor shall ensure that financial systems within the State provide fiscal control and accounting procedures sufficient to—

(1) Permit preparation of required reports;

(2) Permit the tracing of funds to a level of expenditure adequate to establish that funds have not been used in violation of the restrictions on the use of such funds; and

(3) Demonstrate compliance with the matching requirement (sections 104(b)(9), 164(a)(1), 165(a)(1), 165(c)(2), and 182).

(b) The financial management system and the participant data system shall provide federally required records and reports that are uniform in definition, accessible to authorized Federal and State staff, and verifiable for monitoring, reporting, audit and evaluation purposes (sections 165(a)(1), 165(a)(2), and 182).

(c) Pursuant to section 165(a) of the Act, the Governor shall ensure that records shall be maintained of each participant's enrollment in a JTPA program in sufficient detail to demonstrate compliance with the relevant eligibility criteria attending a particular activity and with the restrictions on the provision and duration of services and specific activities authorized by the Act.

(d) The Governor shall ensure that records shall be maintained of such participant information as may be necessary to develop and measure the achievement of performance standards established by the Secretary.

(e) The Governor shall ensure that procedures are developed for retention of all records pertinent to all grants and agreements, including financial, statistical, property and participant records and supporting documentation. For funds allotted to a State for any program year, records must be retained for two years following the date on which the annual expenditure report containing the final expenditures charged to such program year's allotment is submitted to the

Department of Labor. Records for nonexpendable property shall be retained for a period of three years after final disposition of the property.

(f) The Governor shall ensure that the records referenced in paragraphs (a) through (e) of this section shall be retained beyond the prescribed period, if any litigation or audit is begun or if a claim is instituted involving the grant or agreement covered by the records. In these instances, the Governor shall ensure that the records shall be retained until the litigation, audit, or claim has been finally resolved.

(g) In the event of the termination of the relationship with a subrecipient, the Governor or SDA grant recipient or title III substate grantee shall be responsible for the maintenance and retention of the records of any subrecipient unable to retain them.

(Approved by the Office of Management and Budget under control number 1205–0289)

§ 629.36 Reports required.

The Governor shall report to the Secretary pursuant to instructions issued by the Secretary. Reports for programs under titles I and II shall be required by the Secretary no more frequently than semiannually. Reports shall be submitted to the Secretary within 45 calendar days after the end of the report period section 165(a)(2)). Reporting requirements for title III are set forth at § 631.15 of this chapter.

(Approved by the Office of Management and Budget under control number 1205–0200)

§ 629.37 Allowable costs.

(a) General. To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program, be allocable thereto under these principles, and, except as provided herein, not be a general expense required to carry out the overall responsibilities of the Governor or subrecipient. Costs charged to the program shall be consistent with those normally allowed in like circumstances in nonfederally sponsored activities and with applicable State and local law, rules or regulations, as determined by the Governor.

(b) Whether a cost shall be charged as a direct cost or as an indirect cost shall be determined in accordance with the OMB Circulars identified at 29 CFR 92.22(b).

(c) The Governor shall issue guidelines on allowable costs for SDA, title III substate area and statewide programs that shall include provisions that:

(1) Costs resulting from violations of, or failure to comply with, Federal, State or local laws and regulations are not allowable;

(2) Entertainment costs are not allowable;

(3) Insurance policies offering protection against debts established by the Federal Government are not allowable JTPA costs; and

(4) Personal liability insurance for PIC members is allowable.

(d) The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or staff solely for the purpose of discharging general responsibilities as a legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

§ 629.38 Classification of costs.

(a) To comply with the limitations on certain costs contained in section 108 of the Act, allowable costs for programs under title II shall be charged against the following cost categories: Training; administration; and participant support. Only the provisions of paragraph (e)(2)(i), (ii) and (iii)(A) of this section apply to programs under title III of the Act; the classification of costs for programs under title III of the Act are set forth at § 631.13 of this chapter.

(b) Costs are allocable to a particular cost category to the extent that benefits are received by such category.

(c) For State-administered programs, the Governor is required to plan, control and charge expenditures against the aforementioned cost categories.

(d) The Governor is responsible for ensuring that SDA grant recipients and other subrecipients plan, control, and charge expenditures against the aforementioned cost categories.

(e) In assigning costs to the training category pursuant to paragraph (a) of this section, the Governor shall ensure that:

(1) Training costs include: The costs associated with on-the-job training services; employer outreach necessary to obtain job listings or job training opportunities; salaries, fringe benefits, equipment and supplies of personnel directly engaged in providing training (including remedial education; job related counseling for participants; employability assessment and job development; job search assistance; including preparation for work and labor market orientation); books and other teaching aids; equipment and materials used in providing training to participants; classroom space and utility costs; and tuition and entrance fees that represent instructional costs which have a direct and immediate impact on participants. In addition, 50 percent of the costs of a limited work experience program, and 250 hours of youth tryout employment, are considered allowable training costs. A limited work experience program is one that meets the requirements of section 108(b)(3) of the Act. Youth tryout employment is that which meets the requirements of section 205(d)(3)(B) of the Act.

(2) Costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories but may be charged entirely to training or retraining services when the agreement:

(i) Is for training under title II or for retraining under title III, except that the activities at section 314(d)(1)(D) and (E) cannot constitute the primary activity under a performance-based contract/agreement;

(ii) Is fixed unit price; and

(iii)(A) Stipulates that full payment for the full unit price will be made only upon completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement; or

(B) In the case of youth, payment for training packages purchased competitively pursuant to section 141(d)(3) of the Act shall include payment for the full unit price if the training results in either placement in unsubsidized employment or the attainment of an outcome specified in section 106(b)(2) of the Act.

(3) Training costs shall not include the direct or indirect costs associated with the supervision and management of the program.

(4) Training costs do not include supportive services costs as defined in section 4 of the Act or other participant support costs which are determined to be necessary at the local level.

(5) All costs of employment generating activities to increase job opportunities for eligible individuals in the area and the remaining 50 percent of the costs of a limited work experience program, as well as 100 percent of the costs of other work experience programs, are not allowable training costs (section 108(b)(2)(A)).

(6) The salaries and fringe benefits of project directors, program analysts, labor market analysts, supervisors and other administrative positions shall not be charged to training. The compensation of individuals who both instruct and supervise other instructors shall be prorated among the training and administration cost categories based on time records or other verifiable means.

(7) Construction costs may be allowable training or participant support costs only when funds are used to:

(i) Purchase equipment, materials and supplies for use by participants while on the job and for use in the training of such participants. Examples of such equipment, materials and supplies are handtools, workclothes and other low cost items; and

(ii) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and needs-based payments and compensation to participants.

(8) The cost of incorporating a PIC or consortium administrative entity for the purpose of carrying out programs under the Act shall not be charged to training but may be charged to other cost categories as appropriate.

(9) Any single cost which is properly chargeable to training and to one or more other cost categories shall be prorated among training and the other appropriate cost categories.

§ 629.39 Limitations on certain costs.

(a)(1) Not less than 85 percent of the funds for programs under titles I and II of the Act may be expended for the cost of training and participant support, except as provided in paragraph (b) of this section.

(2) Administrative costs are limited to 15 percent of funds available. The 15-percent limitation on administrative costs may not be waived.

(b) Funds allotted under the following sections of the Act are excluded from the requirements of paragraph (a) of this section:

(1) Section 202(b)(4);

(2) Section 202(b)(1), to carry out activities pursuant to section 123(c)(2)(A); and

(3) Section 202(b)(3).

(c)(1) Not less than 70 percent of the funds for programs under titles I and II-A of the Act may be expended for the costs of training, except as provided in paragraphs (d) and (e) of this section.

(2) There is an established 30-percent limitation on combined administrative and participant support costs. This limitation may be waived by the Governor only in accordance with paragraph (e) of this section.

(d) Funds allotted under the following sections of the Act are excluded from the requirements of paragraph (c) of this section:

(1) Section 202(b)(4);

(2) Section 202(b)(1), to carry out activities pursuant to section 123(c)(2);

(3) Section 202(b)(3), to provide technical assistance to SDAs within the State; and

(4) Section 251.

(e) Expenditures may not be in excess of the limitation contained in paragraph (c) of this section except as provided for in section 108(c) of the Act.

(f) Notwithstanding the limitations on certain costs contained in section 108 of the Act and paragraphs (a) through (e) of this section, funds available under section 202(b)(3) of the Act may be used by the Governor or SDA during not more than 2 program years, ending June 30, 1988, to develop and implement a data collection system to track the post-program experience of participants. Thereafter, the provisions of paragraphs (a) through (e) of this section shall apply to incentive and technical assistance funds under section 202(b)(3) of the Act, as appropriate.

(g) The provisions of paragraphs (a) through (f) of this section do not apply to JTPA title III programs or to part 631 of this chapter.

(h) The provisions of this section do not apply to any designated SDA or substate area which served as a concentrated employment program grantee for a rural area under the Comprehensive Employment and Training Act (section 108(d)).

(i) Administrative funds within a SDA or substate area under JTPA title I, II, and/or III programs may, at the discretion of and pursuant to requirements established by the Governor, be pooled and used for all administrative costs of programs within the SDA or substate area assisted with funds under the Act.

§ 629.40 Matching funds.

The Governor shall define and assure the provision of adequate resources to meet the matching requirement of section 123(b) of the Act.

§ 629.41 Property management standards.

(a) Personal or real property procured with JTPA funds or transferred from programs under the Comprehensive Employment and Training Act must be used for purposes authorized by the Act. Subject to the Secretary's rights to such property, the Governor shall maintain accountability for property in accordance with State procedures and the records retention requirements of § 629.35 of this part.

(b) The JTPA program must be reimbursed the fair market value of any unneeded property retained by the Governor for use in a non-JTPA program. The proceeds from the sale of any property or transfer of property to a non-JTPA program must be used for purposes authorized under the Act.

§ 629.42 Audits.

(a) The requirements of 20 CFR part 96, which implement Office of Management and Budget Circular A-128, "Audits of State and Local Governments," apply to JTPA programs administered by recipients and subrecipients, and shall be followed for audits of all program years beginning after July 1, 1985.

(b) Within a timely period after the State submits the audit report to the appropriate Federal official, the Governor shall submit an audit resolution report documenting the Governor's disposition of the reported questioned costs, *i.e.*, whether allowed or disallowed, the basis for allowing questioned costs, and corrective actions taken.

(c) If the Governor intends to request waivers of liability under section 164(e)(2) of the Act, such requests must accompany the audit resolution report along with supporting documentation.

(d) After receiving the audit resolution report(s), the Secretary shall review the report(s), the Governor's disposition, and any liability waiver request. If the Secretary is in agreement with all aspects of the Governor's disposition of the audit(s), the Secretary shall so notify the Governor, constituting final agency action on the audit(s). If the Secretary is in disagreement with the Governor's conclusion on specific points in the audit(s) the Secretary shall resolve the audit(s) through the initial and final determination process described in subpart D of this part.

(e) Audits conducted or arranged by the Inspector General will generally supplement rather than duplicate audits of recipients, PICs, SDAs, title III substate grantees, or other subrecipients.

§ 629.43 Oversight and monitoring.

(a) The Secretary is authorized to monitor and investigate pursuant to section 163 of the Act.

(b) The Governor is responsible for oversight of all SDA grant recipient and title III substate grantee activities and State supported programs.

(c) The PIC and local elected official(s) may conduct such oversight as they, individually or jointly, deem necessary or delegate oversight responsibilities to an appropriate entity pursuant to their mutual agreement.

(Approved by the Office of Management and Budget under control numbers 1205-0263, 1205-0270, 1205-0271 and 1205-0271)

§ 629.44 Sanctions for violations of the Act.

(a) Pursuant to sections 164 (b), (d), (e), (f), (g), and (h) of the Act, the Secretary may impose appropriate sanctions and corrective actions for violations of the Act, regulations, or grant terms and conditions. Additionally, sanctions may include the following:

(1) Offsetting debts, arising from misexpenditure of grant funds, against amounts to which the Governor is or may be entitled under the Act, except as provided in section 164(e)(1) of the Act. The debt shall be fully satisfied when the Secretary reduces amounts allotted to the Governor by the amount of the misexpenditure; and

(2) Determining the amount of Federal cash maintained by the Governor or subrecipient in excess of reasonable grant needs, establishing a debt for the amount of such excessive cash, and charging interest on that debt.

(b) Except for actions under sections 164(f) and 167 of the Act, to impose a sanction or corrective action, the Secretary shall utilize initial and final determination procedures outlined in Subpart D of this part.

(c) To impose a sanction or corrective action regarding a violation of section 167 of the Act, the Secretary shall utilize the procedures of 29 CFR part 31.

(d)(1) The Secretary shall hold the Governor responsible for all funds under the grant. The Governor shall hold subrecipients, including SDA grant recipients and Title III substate grantees, responsible for JTPA funds received through the grant.

(2) The Secretary shall determine the liability of the Governor for misexpenditures of grant funds in accordance with section 164(e) of the Act, including the requirement that the Governor shall have taken prompt and appropriate corrective actions for misexpenditures by a subrecipient.

(3) Prompt, appropriate, and aggressive debt collection action to recover any funds misspent by subrecipients ordinarily shall be considered a part of the corrective action required by section 164(e)(2)(D) of the Act. In this regard, the Governor may request advance approval from the Secretary for contemplated corrective actions. Such requests may address debt collection or options which the Governor plans to initiate or to forego. The Governor's request shall include a description and assessment of all actions taken by the subrecipient to collect the misspent funds.

(4) In making the determination required by section 164(e)(2) of the Act, the Secretary may determine, based on a request from the Governor, that the Governor may forego certain collection actions against a subrecipient where that subrecipient was not at fault with respect to the liability criteria set forth in section 164(e)(2)(A) through section 164(e)(2)(D) of the Act. The Secretary shall consider such requests in assessing whether the Governor's corrective action was appropriate in light of section 164(e)(2)(D) of the Act. At that time, the Secretary shall also consider advance approvals (previously granted pursuant to paragraph (d)(3) of this section) in light of the Governor's demonstrated efforts to undertake the approved course of action.

(5) The Governor shall not be released from liability for misspent funds under the determination required by section 164(e) of the Act until the Secretary determines that further collection action, either by the Governor or subrecipient, would be inappropriate or would prove futile.

(e) The Governor shall have the authority to reduce allocations to a service delivery area or title III substate area if—

(1) The Secretary offsets a debt against funds allotted to the Governor; and

(2) The debt resulted from a misexpenditure by the SDA grant recipient or title III substate grantee or their subrecipients.

(f) Nothing in this section shall preclude the Secretary from imposing a sanction directly against a subrecipient as authorized in section 164(e)(3) of the Act. In such a case, the Secretary shall inform the Governor of the Secretary's action.

§ 629.45 Closeout. [Reserved]

§ 629.46 Performance standards.

(a) The Secretary shall prescribe performance standards for adults and youth under title II–A and dislocated workers under title III in accordance with section 106 of the Act. Standards for youth employment competencies shall prescribe the framework for competency development.

(b) Pursuant to initial and annual instructions issued by the Secretary, the Governor shall:

(1) Collect the data necessary to set standards pursuant to section 165 of the Act; and

(2) Submit reports according to sections 106 and 121(b)(3) of the Act.

(c) Title II performance standards. (1) The Governor shall establish SDA standards for Title II within the parameters set annually by the Secretary pursuant to section 106(e) of the Act and apply the standards in accordance with section 202(b)(3) of the Act.

(2) Pursuant to section 106(h)(1) of the Act, the Governor shall, after exhaustion of remedies below, impose a reorganization plan if a SDA fails to meet its title II performance standards for 2 consecutive years.

(i) Prior to imposition of a reorganization plan, the Governor must offer the subrecipient opportunity for a hearing.

(ii) Should the hearing determination uphold the Governor's imposition of a reorganization plan, the subrecipient may appeal to the Secretary.

(iii) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, Attention: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(iv) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification from the Governor.

(v) The appealing party shall explain why it believes the Governor's decision is contrary to the provisions of section 106 of the Act.

(vi) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the Governor's decision is inconsistent with section 106 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 60 days after this appeal is received (section 106(h)).

(d) Title III performance standards. (1) The Governor shall establish substate grantee performance standards for programs under title III within the parameters set annually by the Secretary pursuant to section 106(e) of the Act and apply the standards in accordance with section 311(a) with regard to incentives.

(2) Any performance cost standard for programs under title III shall make appropriate allowance for the difference in cost resulting from serving workers receiving needs-related payments authorized under § 631.20 of this chapter (section 106(g)).

(3) The Secretary annually will certify compliance, if the program is in compliance, with the title III performance standards established pursuant to paragraph (a) of this section (section 322(a)(4)).

(4) The Governor shall ensure that, within the parameters established by the Secretary pursuant to section 106(e) of the Act, standards for the operation of programs under title III are not inconsistent with the standards

established by the Secretary under the provisions of section 106(g) of the Act (section 311(b)(8)).

(5) Where a substate grantee fails to meet performance standards for 2 consecutive years, the Governor may institute procedures pursuant to the Governor's by-pass authority in accordance with § 631.38(b) of this chapter or require redesignation of the substate grantee in accordance with § 631.35 of this chapter, as appropriate.

(Approved by the Office of Management and Budget under control number 1205–0211)

Subpart D—Grievances, Investigations, and Hearings

§ 629.51 Scope and purpose.

(a) *General.* This subpart establishes the procedures to receive, investigate and resolve grievances, and conduct hearings to adjudicate disputes under the Act. Complaints of discrimination pursuant to section 167(a) of the Act will be handled under 29 CFR parts 31 and 32.

(b) *Non-JTPA remedies.* Whenever any person, organization or agency believes that a Governor, SDA grant recipient, title III substate grantee or other subrecipient has engaged in conduct that violates the Act and that such conduct also violates a Federal statute other than JTPA, or a State or local law, that person, organization or agency may, with respect to the non-JTPA cause of action, institute a civil action or pursue other remedies authorized under other Federal, State, or local law against the Governor, SDA grant recipient, title III substate grantee or other subrecipient without first exhausting the remedies in this subpart. Nothing in the Act or his chapter shall:

(1) Allow any person or organization to join or sue the Secretary with respect to the Secretary's responsibilities under JTPA except as exhausting the remedies in this subpart;

(2) Allow any person or organization to file a suit which alleges a violation of JTPA or these regulations without first exhausting the administrative remedies described in this subpart; or

(3) Be construed to create a private right of action with respect to alleged violations of JTPA or the JTPA regulations.

§ 629.52 State grievance and hearing procedures for non-criminal complaints at the Governor and subrecipient level.

(a) *Policy.* This section deals with the handling of non-criminal complaints. Criminal complaints are to be handled as specified in § 629.55 of this part.

(b) *Procedures at Governor, SDA, and substate grantee levels.* (1) Pursuant to section 144(a) of the Act, each Governor shall maintain a State level grievance procedure and shall insure the establishment of procedures at the SDA grant recipient level and the title III substate grantee level for resolving any complaint alleging a violation of the Act, regulation, grant or other agreements under the Act. The procedures must include the handling of complaints and grievances arising in connection with JTPA programs operated by each SDA grant recipient, title III substate grantee and subrecipient under the Act. These procedures must also provide for resolution of complaints arising from actions, such as audit disallowances or the imposition of sanctions, taken by the Governor with respect to audit findings, investigations, or monitoring reports (section 144(a)).

(2) The grievance hearing procedures shall include written notice of the date, time and place of the hearing, an opportunity to present evidence, and a written decision.

(c) *State review.* (1) If a complainant does not receive a decision at the SDA grant recipient or title III substate grantee level within 60 days of filing the complaint or receives a decision unsatisfactory to the complainant, the complainant then has a right to request a review of the complaint by the Governor. The request for review shall be filed within 10 days of receipt of the adverse decision or 10 days from the date on which the complainant should have received a decision. The Governor shall issue a decision within 30 days. The Governor's decision is final.

(2) The Governor shall also provide for an independent State review of a complaint initially filed at the State level on which a decision was not issued within 60 days or on which the complainant has received an adverse decision. A decision shall be made within 30 days. The Governor's decision is final.

(d) *Federal review of local level complaints without decision.* (1) Should the Governor fail to provide a decision as required in paragraph (c) of this section, the complainant may then request from the Secretary a determination whether reasonable cause exists to believe that the Act or its regulations have been violated.

(2) The Secretary shall act within 90 days of receipt of the request and where there is reasonable cause to believe the Act or regulations have been violated shall direct the Governor to issue a decision adjudicating the dispute pursuant to State and local procedures. The Secretary's action does not constitute final agency action and is not appealable under the Act (section 166(a) and 144(c)). If the Governor does not comply with the Secretary's order within 60 days, the Secretary may impose a sanction upon the Governor for failing to issue a decision.

(3) The request shall be filed no later than 10 days from the date on which the complainant should have received a decision as required in paragraph (c) of this section. The complaint should contain the following:

(i) The full name, telephone number (if any), and address of the person making the complaint;

(ii) The full name and address of the respondent against whom the complaint is made;

(iii) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation;

(iv) The provisions of the Act, regulations, grant or other agreements under the Act believed to have been violated.

(v) A statement disclosing whether proceedings involving the subject of the request have been commenced or concluded before any Federal, State or local authority, and, if so, the date of such commencement or conclusion, the name and address of the authority and the style of the case; and

(vi) A statement of the date the complaint was filed with the Governor, the date on which the Governor should have issued a decision, and an attestation that no decision was issued.

(4) A request will be considered to have been filed when the Secretary receives from the complainant a written statement sufficiently precise to evaluate the complaint and the grievance procedure used by the State, SDA grant recipient or title III substate grantee.

§ 629.53 Non-criminal grievance procedure at employer level.

(a) Governors, SDA grant recipients, title III substate grantees and other subrecipients shall assure that other employers, including private-for-profit employers of participants under the Act, also have a grievance procedure relating to the terms and conditions of employment available to their participants (section 144(b)).

(b) Employers under paragraph (a) of this section may operate their own grievance system or may utilize the grievance system established by the Governor, SDA grant recipient or title III substate grantee under § 629.52 of this part. Employers shall inform participants of the grievance procedure they are to follow.

(c) An employer system shall provide for, upon request by the complainant, a

review of an employer's decision by the SDA grant recipient or title III substate grantee and the Governor, if necessary, in accordance with § 629.52(b) of this part.

§ 629.54 Federal handling of administrative and civil complaints.

(a) (1) The Comptroller General's and Inspector General's authority to conduct audits, evaluations and investigations is as specified in § 629.42 of this part.

(2) The Secretary is authorized to monitor States (section 163(a)).

(3) The Secretary shall each fiscal year investigate several States to evaluate whether the use of funds received under the Act is in compliance with the provisions of the Act (section 165(b)(1)(A)).

(4) The Secretary may receive complaints alleging violations of the Act or regulations through the Department's incident reporting system.

(b) As a result of the findings or content of any of the activities listed in paragraph (a) of this section, the Secretary may:

(1) Direct the Governor to handle a complaint through local grievance procedures established under § 629.52 of this part; or

(2) Investigate and determine whether the Governor or subrecipient(s) are in compliance with the Act and regulations (section 163 (b) and (c)).

(c)(1) The Secretary shall notify the Governor of the findings of the Secretary's investigation and shall give the Governor a period of time, not to exceed 60 days, depending on the nature of the findings, to comment and to take appropriate corrective actions.

(2) The Governor shall offer an opportunity for a hearing at the State level to those subrecipients adversely affected by the results of an investigation, audit or monitoring activity as specified in § 629.52(b) of this part. The Governor shall inform the Secretary of actions undertaken, including any disposition of an audit conducted by the State to deal with the Secretary's findings if one was undertaken within the timeframe specified by the Secretary.

(3) The Secretary shall review the complete file of the investigation and the Governor's actions. The Secretary's review shall take into account the provisions of § 629.44 of this part. If the Secretary is in agreement with the Governor's handling of the situation, the Secretary shall so notify the Governor. This notification shall constitute final agency action.

(d) *Initial and final determination*—(1) *Initial determination.* If the Secretary is dissatisfied with the Governor's disposition of an audit as specified in § 629.42 or other resolution of costs, with the Governor's response to findings pursuant to paragraph (c) of this section, or if the Governor failed to comply with the Secretary's decision pursuant to § 629.52(d)(2) of this part, the Secretary shall make an initial determination of the matter in controversy including the allowability of questioned costs or activities. Such determination shall be based upon the requirements of the Act, regulations, grants, contracts or other agreements, under the Act.

(2) *Informal resolution.* The Secretary shall not revoke a Governor's grant in whole or in part, nor institute corrective actions or sanctions, without first providing the Governor with an opportunity to present documentation or arguments to resolve informally those matters in controversy contained in the Secretary's initial determination. In the case of an initial determination pursuant to an audit, the informal resolution period shall be at least 60 days from issuance of the initial determination and no more than 170 days from the receipt by the Secretary of the final approved audit report. If the matters are resolved informally, the Secretary shall issue a final determination pursuant to paragraph (d)(3) of this section which notifies the parties in writing of the nature of the resolution and may close the file.

(3) *Final determination.* (i) If the Governor and the Secretary do not resolve any matter informally, the Secretary shall provide each party with a written final determination by certified mail return receipt requested. In the case of audits, the final determination shall be issued not later than 180 days after the receipt by the Secretary of the final approved audit report.

(ii) The final determination shall:

(A) Indicate that efforts to informally resolve matters contained in the initial determination have been unsuccessful;

(B) List those matters upon which the parties continue to disagree;

(C) List any modifications to the factual findings and conclusions set forth in the initial determination;

(D) Establish a debt if appropriate;

(E) Determine liability, method of restitution of funds and sanctions; and

(F) In the case of a final determination imposing a sanction or corrective action, offer an opportunity for a hearing in accordance with § 629.57 of this part.

(iii) The final determination constitutes the final agency action unless a hearing is requested.

(e) Nothing in this section shall preclude the Secretary from issuing an initial and final determination directly to a subrecipient in accordance with the authority of section 164(e)(3) of the Act. In such a case, the Secretary shall inform the Governor of the Secretary's action.

§ 629.55 Federal handling of criminal complaints and reports of fraud, abuse and other criminal activity.

All information and complaints involving fraud, abuse or other criminal activity shall be reported directly and immediately to the Secretary of Labor.

§ 629.56 Opportunity for informal review.

(a) Parties to a complaint under § 629.57 of this part may choose to waive their rights to an administrative hearing before the Office of Administrative Law Judges (OALJ) by choosing to transfer the settlement of their dispute to an individual acceptable to all parties for the purpose of conducting an informal review of the stipulated facts and rendering a decision in accordance with applicable law. A written decision will be issued within 60 days after the matter is submitted for informal review.

(b) The waiver of the right to request a hearing before the OALJ will automatically be revoked if a settlement has not been reached within the 60 days provided in paragraph (a) of this section.

(c) The decision rendered under this informal review process shall be treated as a final decision of an Administrative Law Judge pursuant to section 166(b) of the Act.

§ 629.57 Hearings before the Office of Administrative Law Judges.

(a) *Jurisdiction.* The jurisdiction of the OALJ extends only to those complainants identified in sections 164(f) and 166(a) of the Act. All other disputes arising under the Act shall be adjudicated under the appropriate recipient or subrecipient grievance procedures or other applicable law.

(b) *Sanctions.* For the purpose of this section, "sanctions" will not include actions required by authority other than this Act. For example, the imposition of interest charges where required by the Debt Collection Act of 1982 is not a sanction for the purpose of this section.

(c) *Procedures for filing request for hearing.* (1) Within 21 days of receipt of the determination imposing the sanction or corrective action, or denying financial assistance, the applicant, Governor, SDA grant recipient, title III substate grantee or other subrecipient of funds may transmit by certified mail, return receipt requested, a request for hearing to the Chief Administrative Law Judge, United States Department of Labor, Room 700, Vanguard Building, 1111 20th

Street NW., Washington, DC 20036, with one copy to the departmental official who issued the determination and one copy to the Administrator, Office of Financial and Administrative Management, Employment and Training Administration, Washington, DC 20210.

(2) The 21-day filing requirement is jurisdictional; failure to timely request a hearing acts as a waiver of the right to hearing.

(3) The request shall specifically state those issues of the determination upon which review is requested. Those provisions of the determination not specified for review, or the entire determination when no hearing has been requested within the 21 days, shall be considered resolved and not subject to further review. Only alleged violations of the Act, regulations, grant or other agreements under the Act fairly raised in the determination and the request for hearing are subject to review.

(4) The same procedure set forth in paragraphs (c) (1) through (3) of this section applies in the case of a complainant who has not had a dispute adjudicated by the informal review process of § 629.56 of this part within the 60 days, except that the request for hearing before the OALJ must be filed within 15 days of the conclusion of the 60-day period. In addition to including the determination upon which review is requested, the complainant must include a copy of any Stipulation of Facts and a brief summary of proceedings.

(d) *Service and filing.* Copies of all papers required to be served on a party or filed with the OALJ shall be filed simultaneously with the OALJ and served upon the parties of record or their representatives, and shall contain proof of such service.

(e) *Rules of Procedure.* The rules of practice and procedure promulgated by the OALJ (29 CFR part 18) shall govern the conduct of hearings under this section, except that a request for hearing under this section shall not be considered a complaint to which the filing of an answer by DOL or a DOL agency or official is required.

(f) *Prehearing procedures.* In all cases, the OALJ should encourage the use of prehearing procedures to simplify and clarify facts and issues.

(g) *Subpoenas.* Subpoenas necessary to secure the attendance of witnesses and the production of documents or things at hearings shall be obtained from the OALJ and shall be issued pursuant to the authority contained in section 163(b) of the Act, incorporating 15 U.S.C. 49.

(h) *Timely submission of evidence.* The OALJ shall not permit the introduction at the hearing of documentation relating to the allowability of costs if such documentation has not been made available for review either at the time ordered for any prehearing conference, or, in the absence of such an order, at least 3 weeks prior to the hearing date.

(i) *Burden of production.* The Department shall have the burden of production to support the Secretary's decision. To this end, the Secretary shall prepare and file an administrative file in support of the decision. Thereafter, the party or parties seeking to overturn the Secretary's decision shall have the burden of persuasion.

(j) *Relief.* In ordering relief, the OALJ shall have the full authority of the Secretary under section 164 of the Act, except with respect to the provisions of section 164(e) of the Act.

(k) *Timing of decisions.* The OALJ should render a written decision not later than 90 days after the closing of the record.

§ 629.58 Other authority.

Nothing contained in this subpart shall be deemed to prejudice the separate exercise of other authorities in pursuit of remedies and sanctions available outside the Act.

5. Part 630 is revised to read as follows:

PART 630—PROGRAMS UNDER TITLE II OF THE JOB TRAINING PARTNERSHIP ACT

Sec.

Authority: 29 U.S.C. 1579(a).

§ 630.1 Adult and youth programs under part A of title II.

(a) Funding for programs under this section shall be provided in accordance with sections 162, 201, and 202 of the Act. Funds may be used to provide services specified in section 204 of the Act to persons meeting eligibility criteria specified in sections 141(e) and 203 of the Act.

(b)(1) Pursuant to section 203(b) of the Act, not less than 40 percent of funds shall be expended for services to eligible youth. For the purposes of this paragraph (b)(1), the term "eligible youth" includes individuals who are 14 and 15 years of age and enrolled pursuant to section 205(c)(1) of the Act.

(2) To the extent that the ratio of economically disadvantaged youth to economically disadvantaged adults in the SDA differs from the ratio of such individuals nationally as published by the Secretary, the percentage specified in paragraph (b)(1) of this section shall be reduced or increased by a local adjustment factor. This factor, which may be obtained by dividing the SDA ratio of economically disadvantaged youth to economically disadvantaged adults by the national ratio as published by the Secretary, may be multiplied by 40 percent to derive the youth service level for the SDA. The Governor may provide for an alternative methodology to develop the local adjustment factor depending on the availability of data (section 203(b)(2)).

(c) Funds may be used to conduct exemplary youth programs under section 205 of the Act, as follows:

(1) Except for tryout employment authorized under section 205(d)(3)(B) of the Act, exemplary youth programs may be modified to accommodate local conditions as specified in the job training plan (section 205(a)); and

(2) Tryout employment in private-for-profit worksites may be conducted only in accordance with section 205(d) of the Act (section 141(k)).

§ 630.2 Summer youth employment and training programs under part B of title II.

(a) The purposes of title II–B summer programs are to:

(1) Enhance the basic educational skills of eligible youth;

(2) Encourage school completion, or enrollment in supplementary or alternative school programs; and

(3) Provide eligible youth with exposure to the world of work.

(b) Funding for programs under this section shall be provided in accordance with sections 162 and 252 of the Act to provide services specified in section 253 of the Act to economically disadvantaged youth meeting the eligibility criteria set forth in sections 141(e) and 254 of the Act.

(c) The Governor shall issue instructions and schedules to assure that each SDA describes its planned summer youth employment and training program (SYETP) activities in an SYETP plan. The SYETP plan shall include a description of assessment plans and arrangements, a description of program activities and services to be provided, and written program goals and objectives which shall be used to evaluate the effectiveness of programs, and a description of evaluation criteria and process used to evaluate the effectiveness of programs conducted under this section. The Governor may specify other elements that are to be contained in the SYETP plan. The SYETP plan shall:

(1) Describe how the reading and mathematics skills levels of eligible participants will be assessed;

(2) Include the provision of basic and remedial education (other allowable activities specified at section 253 of the Act may also be provided) and based on the results of the assessment conducted under paragraph (c)(1) of this section describe SDA basic and remedial education programs which enhance the basic education skills of youth; and

(3) Describe the written goals and objectives established by the SDA to evaluate the effectiveness of its SYETP as specified at section 255 of the Act, and the evaluation methods which measure the effectiveness of its summer program.

(d) Pursuant to section 254 of the Act, an SDA may offer SYETP activities and services with funds under this section to participants during a vacation period designated as the equivalent of a summer vacation if the local educational agency operates its schools on a year-round full-time basis.

(e) Not more than 15 percent of the funds available for programs under this section may be used for the costs of administration.

(Approved by the Office of Management and Budget under control number 1205-0200)

6. Part 631 is revised to read as follows:

PART 631—PROGRAMS UNDER TITLE III OF THE JOB TRAINING PARTNERSHIP ACT

Subpart A—General Provisions

Sec.

Subpart B—Additional Title III Administrative Standards and Procedures

Subpart C—Needs-Related Payments

Subpart D—State Administration

Subpart E—State Programs

Subpart F—Substate Programs

Subpart G—Federal Delivery of Dislocated Worker Services

Subpart H—Transition Provisions

Authority: 29 U.S.C. 1579(a); sec. 6305(f), Pub. L. 100-418, 102 Stat. 1107; § 631.30(a)(7) also issued under 29 U.S.C. 2107(a); § 631.37(e) also issued under sec. 402, Pub. L. 100-689, 102 Stat. 4178-4179 (29 U.S.C. 1751 note).

Subpart A—General Provisions

§ 631.1 Scope and purpose.

(a) This part implements title III of the Act. Title III programs seek to establish an early readjustment capacity for workers and firms in each State; to provide comprehensive coverage to workers regardless of the cause of dislocation; to provide early referral from the unemployment insurance system to adjustment services as an integral part of the adjustment process; to foster labor, management and community partnerships with government in addressing worker dislocation; to emphasize retraining and reemployment services rather than income support; to create an on-going substate capacity to deliver adjustment services; to tailor services to meet the needs of individuals; to improve accountability by establishing a system of mandated performance standards; to improve financial management by monitoring expenditures and reallotting available funds; and to provide the flexibility to target funds to the most critical dislocation problems.

(b) These regulations apply to JTPA title III programs beginning with Program Year 1989, except as provided for in § 631.70 of these regulations.

§ 631.2 Definitions.

In addition to the definitions contained in sections 4, 301, and 303(e) of the Act and in § 626.4 of this chapter, the following definition applies to programs under title III of the Act and this part:

Substantial layoff means any reduction-in-force which is not the result of a plant closing and which results in an employment loss at a single site of employment during any 30-day period for:

(a)(1) At least 33 percent of the employees (excluding employees regularly working less than 20 hours per week); and

(2) At least 50 employees (excluding employees regularly working less than 20 hours per week); or

(b) At least 500 employees (excluding employees regularly working less than 20 hours per week).

(Approved by the Office of Management and Budget under control number 1205-0276)

§ 631.3 Participant eligibility.

(a) Eligible dislocated workers, as defined in section 301 of the Act, are eligible to participate in programs under this part. For the purposes of determining eligibility under the provisions of section 301(a)(1)(A) of the Act, the term "eligible for" unemployment compensation includes any individual whose wages from employment would be considered in determining eligibility for unemployment compensation under Federal or State unemployment compensation laws.

(b) Eligible dislocated workers include individuals who were self-employed (including farmers and ranchers) and are unemployed:

(1) Because of natural disasters, subject to the provisions of paragraph (e) of this section; or

(2) As a result of general economic conditions in the community in which they reside.

(c) For the purposes of paragraph (b) of this section, categories of economic conditions resulting in the dislocation of a self-employed individual may include, but are not limited to:

(1) Failure of one or more businesses to which the self-employed individual supplied a substantial proportion of products or services;

(2) Failure of one or more businesses from which the self-employed individual obtained a substantial proportion of products or services;

(3) Substantial layoff(s) from, or permanent closure(s) of, one or more plants or facilities that support a significant portion of the State or local economy; and/or

(d) The Governor is authorized to establish procedures to determine the following categories of individuals to be eligible to participate in programs under this part:

(1) Self-employed farmers, ranchers, professionals, independent tradespeople and other businesspersons formerly self-employed but presently unemployed.

(2) Self-employed individuals designated in paragraph (d)(1) of this section who are in the process of going out of business, if the Governor determines that the farm, ranch, or business operations are likely to terminate.

(3) Family members and farm or ranch hands of individuals identified under paragraphs (d) (1) and (2) of this section, to the extent that their contribution to the farm, ranch, or business meets minimum requirements as established by the Governor.

(e) The Governor is authorized to establish procedures to identify individuals permanently dislocated from their occupations or fields of work, including self-employment, because of natural disasters. For the purposes of this paragraph (e), categories of natural disasters include, but are not limited to, any hurricane, tornado, storm, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, explosion, or other catastrophe.

(f) The State may provide services to displaced homemakers (as defined in section 4 of the Act) under this part only if the Governor determines that such services may be provided without adversely affecting the delivery of such services to eligible dislocated workers (section 311(b)(4)).

(g) An eligible dislocated worker issued a certificate of continuing eligibility as provided in § 631.53 of this part shall remain eligible for assistance under this part for the period specified in the certificate not to exceed 104 weeks. The 45-day enrollment provisions at § 629.1(d) of this chapter shall be waived for eligible individuals issued a certificate under this paragraph and no new application need be taken prior to participation.

(h) An eligible dislocated worker who has not been issued such a certificate shall remain eligible if such individual:

(1) Remains unemployed, or

(2) Accepts temporary employment for the purpose of income maintenance prior to, and/or during participation in a training program under this part with the intention of ending such temporary employment at the completion of the training and entry into permanent unsubsidized employment as a result of the training. Such temporary employment must be with an employer other than that from which the individual was dislocated. This provision applies to eligible individuals both prior to and subsequent to enrollment.

(Approved by the Office of Management and Budget under control number 1205–0276)

§ 631.4 Approved training rule.

Participation by any eligible individual in any of the programs authorized under title III of the Act or this part shall be deemed to be acceptance of training with the approval of the State within the meaning of any other provisions of Federal law relating to unemployment benefits.

Subpart B—Additional Title III Administrative Standards and Procedures

§ 631.11 Allotment and obligation of funds by the Secretary.

(a) Funds shall be allotted among the various States in accordance with section 302(b)(1) of the Act, subject to paragraph (b) of this section.

(b) Funds shall be allotted among the various States in accordance with section 302(b)(2)(A) and (B) of the Act as soon as satisfactory data are available under section 462(e) of the Act.

(c) Allotments for the Commonwealth of the Northern Mariana Islands and other territories and possessions of the United States shall be made by the Secretary in accordance with the provisions of section 302(e) of the Act.

§ 631.12 Reallotment of funds by the Secretary.

(a) Based upon reports submitted by States pursuant to § 631.15 of this part, the Secretary shall make determinations regarding total expenditures of funds within the State with reference to the amount required to be reallotted pursuant to section 303(b) of the Act. For purposes of this paragraph (a)—

(1) The funds to be reallotted will be an amount equal to the sum of:

(i) Unexpended funds in excess of 20 percent of the prior year's formula allotments, and

(ii) All unexpended funds made available by formula for the year before the prior year.

(2) (i) The current program year is the year in which the determination is made; and

(ii) The prior program year is the year immediately preceding the current program year.

(3) Unexpended funds shall mean the remainder of the total funds made available by formula that were available to the State for the prior program year minus total accrued expenditures at the end of the prior program year.

(4) Reallotted funds will be made available from current year allotments made available by formula.

(b) Based upon the most current and satisfactory data available, the Secretary shall identify both States with high expenditures and eligible high unemployment States, pursuant to the definitions of those terms in section 303(e) of the Act.

(c) The Secretary shall recapture funds from States identified in paragraph (a) of this section and reallot and reobligate such funds by a Notice of Obligation (NOO) adjustment to current year funds to eligible States as identified in paragraph (b) of this section, as set forth in section 303(a), (b), and (c) of the Act.

(d) Reallotted funds shall be subject to allocation pursuant to § 631.32, and to the cost limitations at § 631.14 of this part.

(e) The provisions of this section and section 303 of the Act shall apply to Program Year 1988, except as provided in section 6305(e) of the Economic Dislocation and Worker Adjustment Assistance Act (29 U.S.C. 1651 note).

(Approved by the Office of Management and Budget under control number 1205–0277)

§ 631.13 Classification of costs at State and substate levels.

(a)(1) To comply with the limitations on certain costs contained in section 315 of the Act, allowable costs under title III shall be planned, controlled, and charged by either the State or the substate grantee against the following cost categories: rapid response services, basic readjustment services, retraining services, needs-related payments and supportive services, and administration. Costs shall be reported to the Secretary of Labor in accordance with the reporting requirements established pursuant to § 631.15 of this part.

(2) All costs shall be allocable to a particular cost category to the extent that benefits are received by such category. No costs shall be chargeable to a cost category except to the extent that such benefits are received by such category.

(b) Rapid response shall include the cost of rapid response activities identified at section 314(b) of the Act.

(1) Staff salary and benefit costs are chargeable to the rapid response services cost category only for that portion of staff time actually spent on rapid response activities.

(2) All other costs are chargeable to the rapid response services cost

category only to the extent that they are solely for rapid response purposes.

(c) Basic readjustment shall include the cost of basic readjustment services identified at section 314(c) of the Act, except that the cost of supportive services under section 314(c)(15) of the Act shall be charged to needs-related payments and supportive services as provided for in paragraph (e) of this section.

(d) Retraining shall include the cost of retraining services identified at section 314(d) of the Act.

(e) Needs-related payments and supportive services shall include the cost of needs-related payments identified at section 314(e) of the Act, and supportive services identified at section 4(24) of the Act and provided for under title III at section 314(c)(15) of the Act.

(f) Administration shall include the administrative cost of programs under title III of the Act, and shall be that portion of necessary and allowable costs which is not directly related to the provision of services and otherwise allocable to the cost categories in paragraphs (b) through (e) of this section. Administration does not include the cost of activities under section 314(b) of the Act. Administration shall include title III funds used for coordination of worker adjustment programs with the Federal-State unemployment compensation system and with chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) and part 617 of this chapter (sections 311(b)(10) and 314(f)).

§ 631.14 Limitations on certain costs.

(a) Of the funds expended during the program year, not more than 15 percent of the funds expended under title III of the Act by any substate grantee or by the Governor may be expended to cover the administrative cost of programs under title III.

(b) Of the funds expended during the program year, not more than 25 percent of the funds expended by any substate grantee or by the Governor may be used to provide needs-related payments and other supportive services.

(c) Of the funds expended during the program year, not less than 50 percent of the funds expended by any substate grantee shall be expended for retraining services specified in section 314(d) of the Act unless a waiver to this requirement is granted by the Governor. The Governor shall prescribe criteria that will allow substate grantees to apply in advance for a waiver of this requirement, pursuant to section 315(a)(2) of the Act. The Governor shall prescribe the time and form for the submission of an application for such a waiver, as provided for at section 315(a)(3) of the Act. The Governor shall not grant a waiver that allows less than 30 percent of the funds expended by a substate grantee to be expended for retraining activities.

(d) Reallotted funds are subject to the limitations on certain costs contained in paragraphs (a) and (b) of this section.

(e) The provisions of paragraphs (h) and (i) at § 629.39 apply to programs under this part.

§ 631.15 Federal reporting requirements.

Notwithstanding the provisions of § 629.36 of this chapter, the Governor shall report to the Secretary pursuant to instructions issued by the Secretary for programs and activities funded under this part. For Program Years 1989 and 1990 financial reports identifying estimated accrued expenditures shall be submitted quarterly, and program reports identifying characteristics and outcomes for participants who have left the programs shall be submitted annually. Thereafter such reports will be submitted on a schedule as specified by the Secretary, but no more frequently than quarterly. Reports shall be provided to the Secretary within 45 calendar days after the end of the report period (section 165(a)(2)).

(Approved by the Office of Management and Budget under control number 1205–0274)

§ 631.16 Complaints, investigations, and penalties.

The provisions of this section apply in addition to the sanctions provisions in § 629.44 of this chapter.

(a) The Secretary shall investigate a complaint or report received from an aggrieved party or a public official which alleges that a State is not complying with the provisions of the State plan required under section 311(a) of the Act (section 311(e)(1)).

(b) Where the Secretary determines that a State has failed to comply with its State plan, and that other remedies under the Act and part 629 of this chapter are not available or are not adequate to achieve compliance, the Secretary may withhold an amount not to exceed 10 percent of the allotment of the State for the program year in which the determination is made for each such violation (section 311(e)(2)(A)).

(c) The Secretary will not impose the penalty provided for under paragraph (b) of this section until all other remedies under the Act and part 629 of this chapter for achieving compliance have been exhausted or are determined to be unavailable or inadequate to achieve State compliance with the terms of the State plan.

(d) The Secretary will make no determination under this section until the affected State has been afforded adequate written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of § 629.57 of this chapter (section 311(e)(2)(B)).

§ 631.17 Federal monitoring and oversight.

The Secretary shall conduct oversight of State administration of programs under this part and of rapid response activities conducted in accordance with § 631.30 of this part.

§ 631.18 Federal by-pass authority.

(a) In the event that a State fails to submit a biennial State plan that is approved under § 631.36 of this part, the Secretary shall make arrangements to use the amount that would be allotted to that State for the delivery in that State of the programs, activities, and services authorized under title III of the Act and this part.

(b) No determination may be made by the Secretary under this section until the affected State is afforded written notification of the Secretary's intent to exercise by-pass authority and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of § 629.57 of this chapter.

(c) The Secretary will exercise by-pass authority only until such time as the affected State has an approved plan under the provisions of § 631.36 of this part (section 321(b)).

(Approved by the Office of Management and Budget under control number 1205–0273)

§ 631.19 Appeals.

Except as provided in this part, disputes arising in programs under this part shall be adjudicated under the appropriate State or local grievance procedures required by § 629.52 of this chapter or other applicable law. Complaints alleging violations of the Act or this part may be filed with the Secretary, pursuant to § 629.54 of this chapter. Paragraphs (a) through (e) of this section refer to appeal provisions set forth in this part.

(a) Section 628.1(c) of this chapter (appeals of denial of SDA designation) shall apply to denial of substate area designations under § 631.34(c) (1) and (3) of this part.

(b) Section 628.5(b) of this chapter (appeals of final disapproval of SDA job training plans or modifications) shall apply to final disapproval of substate plans under § 631.50(f) of this part.

(c) Section 628.5(c) of this chapter (appeals of a Governor's notice of intent to revoke approval of all or part of a plan) shall apply to a Governor's notice of intent to exercise by-pass authority under § 631.38 of this part.

(d) Section 628.6(d) of this chapter (appeals of the Secretary's disapproval of a plan when the SDA is the State) shall apply to plan disapproval when the substate area is the State, as set forth in § 631.50 (g) and (h) of this part.

(e) Decisions pertaining to designations of substate grantees under § 631.35 of this part are not appealable to the Secretary.

(Approved by the Office of Management and Budget under control number 1205-0202)

Subpart C—Needs-related payments.

§ 631.20 Needs-related payments.

(a) Title III funds available to States and substate grantees may be used to provide needs-related payments to participants in accordance with the approved State or substate plan, as appropriate.

(b) In accordance with the approved substate plan, needs-related payments shall be provided to an eligible dislocated worker only in order to enable such worker to participate in training or education programs under this part. To be eligible for needs-related payments:

(1) An eligible worker who has ceased to qualify for unemployment compensation must have been enrolled in a training or education program by the end of the thirteenth week of the worker's initial unemployment compensation benefit period, or, if later, by the end of the eighth week after an employee is informed that a short-term layoff will in fact exceed 6 months.

(2) For purposes of paragraph (a)(1) of this section, the term "enrolled in a training or education program" means that the worker's application for training has been approved and the training institution has furnished written notice that the worker has been accepted in the approved training program beginning within 30 calendar days.

(3) An eligible worker who does not qualify for unemployment compensation must be participating in a training or education program (section 314(e)(1)).

(c) Needs-related payments shall not be provided to any participant for the period that such individual is employed more than 20 hours per week, enrolled in or receiving on-the-job training, out-of-area job search, or basic readjustment services in programs under the Act, nor to any participant receiving trade readjustment allowances, on-the-job training, out-of-area job search allowances, or relocation allowances under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) or part 617 of this chapter.

(d) The level of needs-related payments to an eligible dislocated worker in programs under this part shall not exceed the higher of:

(1) The applicable level of unemployment compensation; or

(2) The poverty level as published by the Secretary of Health and Human Services (section 314(e)(2)).

Subpart D—State Administration

§ 631.30 Designation or creation and functions of a State dislocated worker unit or office and rapid response assistance.

(a) *Designation or creation of State dislocated worker unit or office.* The State shall designate or create an identifiable State dislocated worker unit or office with the capabilities and functions identified below. Such unit or office may be an existing organization or new organization formed for this purpose (section 311(b)(2)). The State dislocated worker unit or office shall:

(1) Make appropriate retraining and basic adjustment services available to eligible dislocated workers through substate grantees, and in statewide, regional or industrywide projects;

(2) Work with employers and labor organizations in promoting labor-management cooperation to achieve the goals of this part;

(3) Operate a monitoring, reporting, and management system to provide adequate information for effective program management, review, and evaluation;

(4) Provide technical assistance and advice to substate grantees;

(5) Exchange information and coordinate programs with the appropriate economic development agency, State education and training and social services programs;

(6) Coordinate with the unemployment insurance system, the Federal-State Employment Service system, the Trade Adjustment Assistance program and other programs under this chapter;

(7) Receive advance notice of plant closings and mass layoffs as provided at section 3(a)(2) of the Worker Adjustment and Retraining Notification Act (29 U.S.C. 2102(a)(2)) and § 639.6(c) of this chapter;

(8) Notify the appropriate substate grantees as soon as possible (preferably within 48 hours) following receipt of employer notice of layoff or plant closing;

(9) Fully consult with labor organizations where substantial numbers of their members are to be served; and

(10) Disseminate throughout the State information on the availability of services and activities under title III of the Act and this part.

(b) *Rapid response capability.* The dislocated worker unit shall have one or more rapid response specialists, and the capability to provide rapid response assistance, on-site, for dislocation events such as permanent closures and substantial layoffs throughout the State. Notwithstanding the definition of "substantial layoff" at § 631.2 of this part, the Governor may, under exceptional circumstances, establish a lower numerical threshold for the purposes of providing rapid response activities. For purposes of this paragraph "exceptional circumstances" include those situations in which layoffs or permanent closures would have a major impact upon the community(ies) in which they occur (section 314(b)).

(1) Such rapid response specialists should be knowledgeable about the resources available through programs under this part and all other appropriate resources available through public and private sources to assist dislocated workers. The expertise required by this part includes knowledge of the Federal, State, and local training and employment systems; labor-management relations and collective bargaining activities; private industry and labor market trends; programs and services available to veterans; and other fields necessary to carry out the rapid response requirements of the Act.

(2) The rapid response specialists should have:

(i) The ability to organize a broad-based response to a dislocation event, including the ability to coordinate services provided under this part with other State-administered programs available to assist dislocated workers, and the ability to involve the substate grantee and local service providers in the assistance effort;

(ii) The authority to provide limited amounts of immediate financial assistance for rapid response activities, including, where appropriate, financial assistance to labor-management committees formed under paragraph (c)(2) of this section;

(iii) Credibility among employers and in the employer community in order to effectively work with employers in difficult situations; and

(iv) Credibility among employee groups and in the labor community, including organized labor, in order to effectively work with employees in difficult situations.

(3) The dissemination of information on the State dislocated worker unit's services and activities should include efforts to ensure that major employers, organized labor, and groups of employees not represented by organized labor, are aware of the availability of rapid response assistance. The State dislocated worker unit should make equal effort in responding to dislocation events without regard to whether the affected workers are represented by a union.

(4) In a situation involving an impending permanent closure or substantial layoff, a State may provide funds, where other public or private resources are not expeditiously available, for a preliminary assessment of the advisability of conducting a comprehensive study exploring the feasibility of having a company or group, including the workers, purchase the plant and continue it in operation.

(5) Rapid response specialists may use funds available under this part:

(i) To establish on-site contact with employer and employee representatives within a short period of time (preferably 48 hours or less) after becoming aware of a current or projected permanent closure or substantial layoff in order to—

(A) Provide information on and facilitate access to available public programs and services; and

(B) Provide emergency assistance adapted to the particular permanent closure or substantial layoff; such emergency assistance may include financial assistance for appropriate rapid response activities, such as arranging for the provision of early intervention services and other appropriate forms of immediate assistance in response to the dislocation event;

(ii) To promote the formation of labor-management committees as provided for in paragraph (c) of this section, by providing—

(A) Immediate assistance in the establishment of the labor-management committee, including providing immediate financial assistance to cover the start-up costs of the committee;

(B) A list of individuals from which the chairperson of the committee may be selected;

(C) Technical advice as well as information on sources of assistance, and liaison with other public and private services and programs; and

(D) Assistance in the selection of worker representatives in the event no union is present;

(iii) To provide ongoing assistance to labor-management committees described in paragraph (c) of this section by—

(A) Maintaining ongoing contact with such committees, either directly or through the committee chairperson;

(B) Attending meetings of such committees on an ex officio basis; and

(C) Ensuring ongoing liaison between the committee and locally available resources for addressing the dislocation, including the establishment of linkages with the substate grantee or with the service provider designated by the substate grantee to act in such capacity;

(iv) To collect information related to—

(A) Economic dislocation (including potential closings or layoffs); and

(B) All available resources within the State for displaced workers, which information shall be made available on a regular basis to the Governor and the SJTCC to assist in providing an adequate information base for effective program management, review, and evaluation;

(v) To provide or obtain appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in efforts to avert worker dislocations;

(vi) To disseminate information throughout the State on the availability of services and activities carried out by the dislocated worker unit or office; and

(vii) To assist the local community in developing its own coordinated response and in obtaining access to State economic development assistance.

(c) *Labor-management committees.* As provided for in sections 301(b)(1) and 314(b)(1)(B) of the Act, labor-management committees are a form of rapid response assistance which may be voluntarily established to respond to actual or prospective worker dislocation.

(1) Labor management committees ordinarily include (but are not limited to) the following—

(i) Shared and equal participation by workers and management, with members often selected in an informal fashion;

(ii) Shared financial participation between the company and the State, using funds provided under title III of the Act, in paying for the operating expenses of the committee; in some instances, labor union funds may help to pay committee expenses;

(iii) A chairperson, to oversee and guide the activities of the committee who—

(A) Shall be jointly selected by the labor and management members of the committee;

(B) Is not employed by or under contract with labor or management at the site; and

(C) Shall provide advice and leadership to the committee and prepare a report on its activities;

(iv) The ability to respond flexibly to the needs of affected workers by devising and implementing a strategy for assessing the employment and training needs of each dislocated worker and for obtaining the services and assistance necessary to meet those needs;

(v) A formal agreement, terminable at will by the workers or the company management, and terminable for cause by the Governor; and

(vi) Local job identification activities by the chairperson and members of the committee on behalf of the affected workers.

(2) Because they include employee representatives, labor-management committees typically provide a channel whereby the needs of eligible dislocated workers can be assessed, and programs of assistance developed and implemented, in an atmosphere supportive to each affected worker. As such, committees must be perceived to be representative and fair in order to be most effective.

(Approved by the Office of Management and Budget under control number 1205–0275)

§ 631.31 Monitoring and oversight.

The Governor is responsible for monitoring and oversight of all State and substate grantee activities under this part. In such monitoring and oversight of substate grantees, the Governor shall ensure that expenditures and activities are in accordance with the substate plan or modification thereof.

(Approved by the Office of Management and Budget under control number 1205–0263, 1205–0270 and 1205–0271)

§ 631.32 Allocation of funds by the Governor.

Of the funds allotted to the Governor by the Secretary under §§ 631.11 and 631.12 of this part:

(a) The Governor shall issue allocations to substate grantees, the sum of which shall be no less than 50 percent of the State's allotment (section 302(d)).

(b)(1) The Governor shall prescribe the formula to be used in issuing substate allocations to substate grantees.

(2) The formula prescribed pursuant to paragraph (b)(1) of this section shall utilize the most appropriate information available to the Governor. In prescribing the formula, the Governor shall include (but need not be limited to) the following information:

(i) Insured unemployment data;
(ii) Unemployment concentrations;
(iii) Plant closing and mass layoff data;
(iv) Declining industries data;
(v) Farmer-rancher economic hardship data; and
(vi) Long-term unemployment data.

(3) The Governor may allow for an appropriate weight for each of the formula factors set forth in paragraph (b)(2) of this section. The formula may be amended no more frequently than once each program year. The formula shall be used for substate allocations of "fifty-percent" funds under section 302(d) of the Act.

(c) The Governor may reserve an amount equal to not more than 40 percent of the funds allotted to the State under § 631.11 and § 631.12 of this part for State activities and for discretionary allocations to substate grantees (section 302(c)(1)).

(d) The Governor may reserve an additional amount equal to not more than 10 percent of the funds allotted to the State under § 631.11 of this part. The Governor shall allocate such funds subject to SJTCC review and comment, during the first three quarters of the program year among substate grantees on the basis of need. Such funds shall be allocated to substate grantees and shall not be used for statewide activities (sections 302(c)(2) and 317(1)(B)).

§ 631.33 State procedures for identifying funds subject to mandatory Federal reallotment.

The Governor shall establish procedures to assure the equitable identification of funds required to be reallocated pursuant to section 303(b) of the Act. Funds so identified may be funds provided to the State pursuant to section 302(c)(1) of the Act and/or to substate grantees pursuant to section 302 (c)(2) and/or (d) of the Act (section 303(d)). Such procedures may not exempt either State or substate funds from such consideration.

§ 631.34 Designation of substate areas.

(a) The Governor, after receiving recommendations from the SJTCC, shall designate substate areas for the State (section 312(a)).

(b) In designating substate areas, the Governor shall:

(1) Ensure that each service delivery area (SDA) within the State is included within a substate area and that no SDA is divided among two or more substate areas; and

(2) Consider the availability of services throughout the State, the capability to coordinate the delivery of services with other human services and economic development programs, and the geographic boundaries of labor market areas within the State.

(c) Subject to paragraph (b) of this section, the Governor shall designate as a substate area:

(1) Any single SDA that has a population of 200,000 or more;

(2) Any two or more contiguous SDAs that:

(i) In the aggregate have a population of 200,000 or more; and

(ii) Request such designation: and

(3) Any concentrated employment program grantee for a rural area as described in section 101(a)(4)(A)(iii) of the Act.

(d) In addition to the entities identified in paragraph (c) of this section, the Governor may, without regard to the 200,000 population requirement, designate SDAs with smaller populations as substate areas.

(e) The Governor may deny a request for substate area designation from a consortium of two or more SDAs that meets the requirements of paragraph (c)(2) of this section only upon a determination that the request is not consistent with the effective delivery of services to eligible dislocated workers in the relevant labor market area, or would otherwise be inappropriate. The Governor will give good faith consideration to all such requests by a consortium of SDAs to be a substate area. In denying a consortium's request for substate area designation, the Governor shall set forth the basis and rationale for the denial (section 322(a)(5)).

(f) In the case where the service delivery area is the State, the entire State will be designated as a single substate area.

(g)(1) Entities described in paragraphs (c)(1) and (3) of this section may appeal the Governor's denial of substate area designation to the Secretary of Labor. The procedures that apply to such appeals are as follows:

(i) Appeals shall be submitted to the Secretary, U.S. Department of Labor, Washington, DC 20210, ATTENTION: ASET. A copy of the appeal shall simultaneously be provided to the Governor.

(ii) The Secretary shall not accept an appeal dated later than 30 days after receipt of written notification of the denial from the Governor.

(iii) The appealing party shall explain why it believes the denial is contrary to the provisions of section 312 of the Act.

(iv) The Secretary shall accept the appeal and make a decision only with regard to determining whether or not the denial is inconsistent with section 312 of the Act. The Secretary may consider any comments submitted by the Governor. The Secretary shall make a final decision within 30 days after this appeal is received (section 312(a)(4)).

(2) An entity described in paragraph (c)(2) of this section that has been denied substate area designation may utilize the State-level grievance procedures required by section 144(a) of the Act and 629.52 of this chapter for the resolution of disputes arising from such a denial.

(h) Designation of substate areas shall not be revised more than once each two years. All such designations must be completed no later than four months prior to the beginning of any program year (section 312(a)(6)).

§ 631.35 Designation of substate grantees.

The Governor may establish procedures for the designation of substate grantees.

(a) Designation of the substate grantee for each substate area shall be made on a biennial basis.

(b) Entities eligible for designation as substate grantees include:

(1) Private industry councils in the substate area;

(2) Service delivery area grant recipients or administrative entities;

(3) Private non-profit organizations;

(4) Units of general local government in the substate area, or agencies thereof;

(5) Local offices of State agencies; and

(6) Other public agencies, such as community colleges and area vocational schools.

(c) Substate grantees shall be designated in accordance with an agreement among the Governor, the local elected official or officials of such area, and the private industry council or councils of such area. Whenever a substate area is represented by more than one such official or council, the respective officials and councils shall each designate representatives, in accordance with procedures established by the Governor (after consultation with the SJTCC), to negotiate such agreement.

(d) The agreement specified in paragraph (c) of this section shall set forth the conditions, considerations, and other factors related to the selection of substate grantees in accordance with section 312(b) of the Act.

(e) The Governor will negotiate in good faith with the parties identified in paragraph (c) of this section and shall make a good faith effort to reach agreement. In the event agreement cannot be reached on the selection of a substate grantee, the Governor shall select the substate grantee.

(f) Decisions under paragraphs (c), (d), and (e) of this section are not

appealable to the Secretary (section 312 (b) and (c)).

§ 631.36 Biennial State plan.

(a) In order to receive an allotment of funds under §§ 631.11 and 631.12 of this part, the State shall submit to the Secretary, in accordance with instructions issued by the Secretary, on a biennial basis, a biennial State plan (section 311). Such plan shall include:

(1) Assurances that—

(i) The State will comply with the requirements of Title III of the Act and this part;

(ii) Services will be provided only to eligible displaced workers, except as provided in paragraph (a)(2) of this section;

(iii) Services will not be denied on the basis of State of residence to eligible dislocated workers displaced by a permanent closure or substantial layoff within the State; and may be provided to other eligible dislocated workers regardless of the State of residence of such workers;

(2) Provision that the State will provide services under this part to displaced homemakers only if the Governor determines that the services may be provided to such workers without adversely affecting the delivery of services to eligible dislocated workers;

(3) A description of the substate allotment and reallotment procedures and assurance that they meet the requirements of the Act and this part;

(4) A description of the State procurement system and procedures to be used under title III of the Act and this part; and

(5) Assurance that the State will not prescribe any performance standard which is inconsistent with § 629.46(d) of this chapter.

(b) The State biennial plan shall be submitted to the Secretary on or before the May 1 immediately preceding the first of the two program years for which the funds are to be made available.

(c) Any plan submitted under paragraph (a) of this section may be modified to describe changes in or additions to the programs and activities set forth in the plan. No plan modification shall be effective unless reviewed pursuant to paragraph (d) of this section and approved pursuant to paragraph (e) of this section.

(d) The Secretary shall review State biennial plans and plan modifications, including any comments thereon submitted by the SJTCC, for overall compliance with the provisions of the Act, this part, and the instructions issued by the Secretary.

(e) A State biennial plan or plan modification is submitted on the date of its receipt by the Secretary. The Secretary shall approve a plan or plan modification within 45 days of submission unless, within 30 days of submission, the Secretary notifies the Governor in writing of any deficiencies in such plan or plan modification.

(f) The Secretary shall not finally disapprove the State biennial plan or plan modification of any State except after written notice and an opportunity to request and to receive a hearing before an administrative law judge pursuant to the provisions of § 629.57(c) of this chapter.

(Approved by the Office of Management and Budget under control number 1205–0173)

§ 631.37 Coordination activities.

(a) Services under this part shall be integrated or coordinated with services and payments made available under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) and part 617 of this chapter and programs provided by any State or local agencies designated under section 239 of the Trade Act of 1974 (19 U.S.C. 2311) or part 617 of this chapter (section 311(b)(10)). Such coordination should be effected under provisions of an interagency agreement when the State agency responsible for administering programs under this part is different from the State agency administering Trade Act programs.

(b) States may use funds allotted under §§ 631.11 and 631.12 of this part for coordination of worker readjustment programs, (*i.e.*, programs under this part and trade adjustment assistance under part 617 of this chapter) and the unemployment compensation system consistent with the limitation on administrative expenses (see § 631.14(a)(1) of this part). Each State shall be responsible for coordinating the unemployment compensation system and worker readjustment programs (section 314(f)).

(c) Services under this part will be coordinated with dislocated worker services under title III of the Carl D. Perkins Vocational Education Act (20 U.S.C. 2351 *et seq.*) (section 311(b)(5)).

(d) In promoting labor management cooperation, including the formation of labor-management committees under this part, the dislocated worker unit shall consider cooperation and coordination with labor management committees established under other authorities (section 311(b)(3)(B)).

(e) In accordance with section 402 of the Veterans' Benefits and Programs Improvement Act of 1988, 29 U.S.C. 1751 note, services under this part will be coordinated with programs administered by the Veterans Administration, including the Veterans' Job Training Act (29 U.S.C. 1721 note), title IV–C of the Job Training Partnership Act (29 U.S.C. 1721 *et seq.*) and part 635 of this chapter, and other training, employment and education programs which may have special provisions for veterans.

§ 631.38 State by-pass authority.

(a)(1) In the event that a substate grantee fails to submit a plan, or submits a plan which is not approved by the Governor (see § 631.50(f) of this part), the Governor may direct the expenditure of funds allocated to the substate area.

(2) The Governor's authority under this paragraph (a) to direct the expenditure of funds remains in effect only until such time as a plan is submitted and approved, or a new substate grantee is designated (section 313(c)).

(3) The Governor shall not direct the expenditure of funds under this paragraph (a) until after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.5(b) of this chapter.

(b)(1) If a substate grantee fails to expend funds allocated to it in accordance with its plan, the Governor, subject to appropriate notice and opportunity for comment in the manner required by section 105(b) (1), (2), and (3) of the Act, may direct the expenditure of funds only in accordance with the substate plan.

(2) The Governor's authority under this paragraph (b) to direct the expenditure of funds shall remain in effect only until:

(i) The substate grantee corrects the failure;

(ii) The substate grantee submits an acceptable modification; or

(iii) A new substate grantee is designated (sections 313 (a) and (d)).

(3) The Governor shall not direct the expenditure of funds under this paragraph (b) until after the affected substate grantee has been afforded advance written notice of the Governor's intent to exercise such authority, and an opportunity to appeal to the Secretary pursuant to the provisions of § 628.5(c) of this chapter.

(c) When the substate area is the State, the Secretary shall have the same authority as the Governor under paragraphs (a) and (b) of this section.

Subpart E—State Programs

§ 631.40 State program operational plan.

(a) The Governor shall submit to the Secretary biennially, in accordance with instructions issued by the Secretary, a State program operational plan describing the specific activities, programs and projects to be undertaken with the "forty-percent" funds reserved by the Governor under § 631.32(c) of this part.

(b) The State program operational plan shall include a description of the mechanisms established between the Federal-State Unemployment Compensation System, the Trade Adjustment Assistance Program, and programs authorized under title III of the Act and this part to coordinate the identification and referral of dislocated workers and the exchange of information.

(Approved by the Office of Management and Budget under control number 1205–0273)

§ 631.41 Allowable state activities.

(a) States may use "forty-percent" funds reserved under § 631.32(c) of this part, subject to the provisions of the State biennial and program operational plans, for:

(1) Rapid response assistance;

(2) Basic readjustment services when undertaken in Statewide, regional or industrywide projects, or initially, as part of rapid response assistance;

(3) Retraining services, including (but not limited to) those in section 314(d) of the Act when undertaken in Statewide, industrywide and regional programs;

(4) Coordination with the unemployment compensation system, in accordance with § 631.37(b) of this part;

(5) Discretionary allocation for basic readjustment and retraining services to provide additional assistance to areas that experience substantial increases in the number of dislocated workers, to be expended in accordance with the substate plan or a modification thereof;

(6) Incentives to provide training of greater duration for those who require it; and

(7) Needs-related payments in accordance with section 315(b) of the Act.

(b) Activities will be coordinated with other programs serving dislocated workers, including training under chapter 2 of title II of the Trade Act of 1974 (19 U.S.C. 2271 *et seq.*) and part 617 of this chapter.

(c) Where appropriate, State-level activities should be coordinated with activities and services provided by substate grantees.

(d) Retraining services provided to individuals with funds available to a State should be limited to those individuals who can most benefit from and are in need of such services.

(e) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a substate area shall be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(f) Services provided to displaced homemakers should be part of ongoing programs and activities under title III and this part and not separate and discrete programs.

(g) The provisions of section 107 (a) and (b) of the Act (but not subsections (c) and (d) of section 107) and § 629.34 of this chapter apply to State selection of service providers for "forty-percent" funded activities authorized in § 631.32(c) of this part.

(Approved by the Office of Management and Budget under control number 1205–0273)

Subpart F—Substate Programs

§ 631.50 Substate plan.

(a) In order to receive an allocation of funds under § 631.32 of this part, the substate grantee shall submit to the Governor a substate plan, in accordance with instructions issued by the Governor. Such plan shall meet the requirements of this section and shall be approved by the Governor prior to funds being allocated to a substate grantee.

(b) The Governor shall issue instructions and schedules that assure that substate plans and plan modifications conform to all requirements of the Act and this part and contain the statement required by section 313(b) of the Act.

(c) Substate plans shall provide for compliance with the cost limitation provisions of § 631.14 of this part.

(d) The SJTCC shall review and submit to the Governor written comments on substate plans.

(e) Prior to the submission of the substate plan to the Governor, the substate grantee shall submit the plan to the parties to the agreement described in § 631.35(c) of this part for review and comment (section 313(a)).

(f) The Governor's review and approval (or disapproval) of a substate plan or plan modification, and appeals to the Secretary from disapprovals thereof, shall be conducted according to the provisions of section 105 of the Act and § 628.5 of this chapter, except that in applying that section to this paragraph the words "SDA" and "PIC" shall read "substate grantee" and the phrase "job training plan" shall read "plan" (section 313(c)).

(g) If a substate grantee fails to meet the provisions for plan submission and approval found in this section, the Governor may exercise the by-pass authority set forth at § 631.38 of this part.

(h) When the substate area is the State, the substate plan (and plan modification(s)) shall be submitted by the Governor to the Secretary. The dates for submission and consideration and the Secretary's review and approval (or disapproval) of the plan or plan modification, and appeals to administrative law judges from disapproval thereof, shall be conducted according to the provisions of § 628.6 of this chapter, except that in applying that section to this paragraph the word "SDA" shall read "substate grantee" and the phrase "job training plan" shall read "plan".

(Approved by the Office of Management and Budget under control number 1205–0273)

§ 631.51 Allowable substate program activities.

(a) The substate grantee may use JTPA section 302 (c)(1), (c)(2), and (d) funds allocated by the Governor under § 631.32 of this part for basic readjustment services, retraining services, supportive services and needs-related payments.

(b) The provisions of part 629 of this chapter apply to funds allocated to substate grantees, as appropriate.

(c) Other than basic and remedial education, literacy and English for non-English speakers training, retraining services provided with funds available to a substate area shall be limited to those for occupations in demand in the area or another area to which the participant is willing to relocate, or in sectors of the economy with a high potential for sustained demand or growth.

(d) Retraining services provided to individuals with funds available to a State should be limited to those individuals who can most benefit from and are in need of such services.

§ 631.52 Selection of service providers.

(a) The substate grantee shall provide authorized JTPA title III services within the substate area, pursuant to an agreement with the Governor and in accordance with the approved State plan and substate plan, including the selection of service providers.

(b) The substate grantee may provide authorized JTPA title III services directly or through contract, grant, or

agreement with service providers (section 312(d)).

(c) Services provided to displaced homemakers should be part of ongoing programs and activities under title III of the Act and this part and not separate and discrete programs.

(d) The provisions of section 107 (a), (b), and (c) of the Act and § 629.34 of this chapter apply to substate grantee selection of service providers as specified in this section. In applying the provisions of JTPA Section 107, the phrase "service delivery area" shall read "substate area" and the phrase "administrative entity" shall read "substate grantee."

§ 631.53 Certificates of continuing eligibility.

(a) A substate grantee may issue to any eligible dislocated worker who has applied for the program authorized in this part a certificate of continuing eligibility. Such a certificate of continuing eligibility:

(1) May be effective for periods not to exceed 104 weeks,

(2) Shall not include any reference to any specific amount of funds,

(3) Shall state that it is subject to the availability of funds at the time any such training services are to be provided, and

(4) Shall be non-transferable.

(b) Acceptance of a certificate of continuing eligibility shall not be deemed to be enrollment in training.

(c) Certificates of continuing eligibility may be used, subject to the conditions included on the face of the certificate, in two distinct ways:

(1) To defer the beginning of retraining: Any individual to whom a certificate of continuing eligibility has been issued under paragraph (a) of this section shall remain eligible for retraining and education services authorized under this part for the period specified in the certificate, notwithstanding the definition of "eligible dislocated worker" in section 301(a) of the Act or the participant eligibility provisions in § 631.3 of this part, and may use the certificate in order to receive retraining services, subject to the limitations contained in the certificate; or

(2) To permit eligible dislocated workers to seek out and arrange their own retraining with service providers approved by the substate grantee; retraining provided pursuant to the certificate shall be in accord with requirements and procedures established by the substate grantee and shall be conducted under a grant, contract, or other arrangement between the substate grantee and the service provider.

(d) Substate grantees shall ensure that records are maintained showing to whom such certificates of continuing eligibility have been issued, the dates of issuance, and the number redeemed by the substate grantees.

Subpart G—Federal Delivery of Dislocated Worker Services

§ 631.60 General.

Of the funds appropriated for title III of the Act, 20 percent (less those amounts allotted in accordance with section 302(e) of the Act) shall be used for Federal responsibilities as described in part B of title III. Subject to the provisions of section 324 of the Act, the Secretary may reserve funds under this part for awards to entities submitting applications for such funds based upon selection criteria published by the Secretary. The Secretary may utilize reserve funds to provide additional assistance to States to assist the States in carrying out programs under this part.

§ 631.61 Application for funding and selection criteria.

To qualify for consideration for funds reserved by the Secretary for activities under section 323 of the Act, applications shall be submitted to the Secretary pursuant to instructions issued by the Secretary on an annual basis specifying application procedures, selection criteria, and approval process. Separate instructions will be issued for each category of grant awards, as determined by the Secretary.

Subpart H—Transition Provisions

§ 631.70 Special provisions for program startup.

(a) In order to provide for the orderly transition to and implementation of the provisions of this part, the following conditions shall apply to the use of JTPA title III funds allotted by formula to the State and available for Program Years 1988 and 1989:

(1) *PY 1988 programs.* The Governor shall, during the program year beginning July 1, 1988, continue to administer programs under title III of the Act prior to the enactment of Public Law 100–418 (August 23, 1988) in the same manner as such programs were administered during prior program years, except that funds allotted by formula for PY 1988 shall not be subject to the cost limitations at 20 CFR 629.39 and 631.13 (1988 ed.), as published on February 12, 1988 at 53 FR 4269 and 4276. Program years 1986 and 1987 funds remain subject to these limitations, except as described in paragraph (a)(2) of this section.

(2) *Transition and implementation during PY 1988.* The Governor may use a limited amount of funds allotted for PY 1988 and earlier years to cover the costs of transition and implementation. Funds used for transition and implementation shall not be subject to the cost limitations or matching requirements at 20 CFR 629.39, 631.13 and 631.14 (1988 ed.) as published on February 12, 1988, at 53 FR 4269 and 4276, to the extent that such funds are—

(i) Expended for one-time costs associated with the transition such as reconstitution of the SJTCC; establishment of substate areas and substate grantees; establishment of the State dislocated worker unit; establishment of management systems; development of the State plan; and development of substate plans;

(ii) Expended for allowable rapid response costs which conform to the requirements of § 631.13(b) of this part;

(iii) Separately accounted for as salaries and benefits of staff for the time spent on developing and implementing new systems and linkage arrangements, and other costs directly associated with activities under paragraphs (a)(2) (i) and (ii) of this section; and

(iv) not used for the purchase of equipment or computer hardware.

(3) *PY 1989 Programs.* (i) To ensure maximum opportunity for implementation and operation of programs and activities under title III of the Act, as amended by Public Law 100–418 (August 23,1988), beginning on July 1, 1989, the Governor shall make available for programs and activities to be administered in accordance with the regulations in this part an amount not less than the formula allotment to the State as described in § 631.11 of this part, plus any amount received by the State as a result of reallotment. Such amount shall include the funds unexpended on June 30, 1989 which are subject to reallotment under § 631.12 of this part.

(ii) The Governor may also make available for this part any formula funds unexpended on June 30, 1989, which are not subject to reallotment, to the extent that such funds are not needed for continuation of existing programs as described in paragraph (a)(4) of this section. Such funds shall be subject to the provisions of this part.

(4) *Continuation of existing programs in PY 1989 and PY 1990.* Programs and activities funded with formula allotments made to the State prior to PY 1989 and continued after June 30, 1989, shall be subject to the JTPA regulations published at 53 FR 4265 *et seq.* on February 12, 1988, as modified by the

provisions of paragraph (a)(1) of this section. (section 6305(b)).

(b) Before an SJTCC may begin to perform the functions specified by JTPA section 317, as amended by subtitle D of Title VI of Public Law 100–418, the Governor shall certify to the Secretary that the changes in the SJTCC's membership required by section 122 of the Act, as amended by section 6304(b) of Public Law 100–418, have been accomplished no later than January 1, 1989. (section 6305(c)).

(c) The initial Governor's "biennial" and "program operational" State plans developed pursuant to § 631.36 and § 631.40, respectively, of this part shall be for only one program year (PY 1989). These plans shall be modified to incorporate sections applicable for the subsequent biennial period (Program Years 1990–91).

(d) Pursuant to procedures established by the Governor, the initial designation of substate areas and substate grantees pursuant to § 631.34 and § 631.35 may be for only one program year (PY 1989), or for three program years (PY 1989 through PY 1991) to coincide with the planning cycle and development of plans under this part.

Signed at Washington, DC, this 13th day of September, 1989.

Elizabeth Dole,

Secretary of Labor.

[FR Doc. 89–22083 Filed 9–21–89; 8:45 am]

BILLING CODE 4510-30-M

Federal Register

Friday,
September 22, 1989

Part VIII

The President

Federal Register
Vol. 54, No. 183
Friday, September 22, 1989

Presidential Documents

Title 3—

The President

Proclamation 6023 of September 20, 1989

Law and Order in the Virgin Islands

By the President of the United States of America

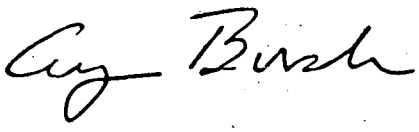
A Proclamation

WHEREAS; I have been informed that conditions of domestic violence and disorder exist in and about the Virgin Islands endangering life and property and obstructing execution of the laws, and that the law enforcement resources available to that territory, including the National Guard, are unable to suppress such acts of violence and to restore law and order; and

WHEREAS; such domestic violence and disorder are also obstructing the execution of the laws of the United States, and endangering the security of Federal property and function, in and about the Virgin Islands.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, do command all persons engaged in such acts of violence to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this twentieth day of September, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and fourteenth.



[FR Doc. 89-22671
Filed 9-21-89; 11:58 am]
Billing code 3195-01-M

Presidential Documents

Executive Order 12690 of September 20, 1989

Providing for the Restoration of Law and Order in the Virgin Islands

WHEREAS; I have today issued Proclamation No. 6023 pursuant to the provisions of Chapter 15 of Title 10 of the United States Code;

WHEREAS; the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces by the Constitution and laws of the United States, including Chapter 15 of Title 10 of the United States Code, it is hereby ordered as follows:

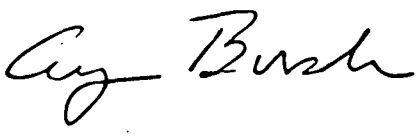
Section 1. Units and members of the Armed Forces of the United States will be used to suppress the violence described in the proclamation and to restore law and order in and about the Virgin Islands.

Sec. 2. The Secretary of Defense is authorized to use such of the Armed Forces as may be necessary to carry out the provisions of Section 1. To that end, he is authorized to call into the active military service of the United States units or members of the National Guard, as authorized by law, to serve in an active duty status for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretary of Defense.

In carrying out the provisions of this order, the Secretary of Defense shall coordinate such law enforcement policies with the Attorney General.

Sec. 3. The Secretary of Defense is authorized to determine when Federal military forces shall be withdrawn from the disturbance area and when federalized National Guard units and personnel shall be released from active Federal service.

Sec. 4. The Secretary of Defense is authorized to delegate to subordinate officials of his Department any of the authority conferred upon him by this order.



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September 20, 1989.

[FR Doc. 89-22672
Filed 9-21-89; 11:59 am]
Billing code 3195-01-M

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